

# **EXHIBIT DX2**

**TO DECLARATION OF  
DEBORAH E. LEWIS IN SUPPORT  
OF DEFENDANTS' MEMORANDUM IN  
OPPOSITION TO PLAINTIFFS' MOTION  
TO EXCLUDE TESTIMONY OF  
ANTONIA HUGHES, RN, BSN, MA, CNOR**

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In Re:

Bair Hugger Forced Air Warming  
Products Liability Litigation

This Document Relates To:

All Actions MDL No. 15-2666 (JNE/FLM)

DEPOSITION OF ANTONIA B. HUGHES

VOLUME I, PAGES 1 - 189

AUGUST 3, 2017

(The following is the deposition of ANTONIA  
B. HUGHES, taken pursuant to Notice of Taking  
Deposition, via videotape, at the Hausfeld law firm,  
1700 K Street Northwest, Suite 650, in the City of  
Washington, District of Columbia, commencing at  
approximately 10:05 o'clock a.m., August 3, 2017.)

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## 1 APPEARANCES:

2 On Behalf of the Plaintiffs:

3 Gabriel Assaad  
 4 KENNEDY HODGES  
 4409 Montrose Boulevard  
 Suite 200  
 5 Houston, Texas 77006  
 6 Genevieve M. Zimmerman  
 MESHBER & SPENCE, LTD.  
 7 1616 Park Avenue  
 Minneapolis, Minnesota 55404

8 On Behalf of the Defendants:

9 Deborah E. Lewis  
 10 BLACKWELL BURKE P.A.  
 431 South Seventh Street  
 Suite 2500  
 11 Minneapolis, Minnesota 55415

## 12 ALSO PRESENT:

13 Ronald M. Huber, Videographer  
 14 Angel Dorsey, Hausfeld Law Firm

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## 1 PROCEEDINGS

2 (Witness sworn.)

3 ANTONIA B. HUGHES,

4 Called as a witness, being first  
 5 duly sworn, was examined and  
 6 testified as follows:

## 7 EXAMINATION

8 BY MR. ASSAAD:

9 Q. Can you please state your name?

10 A. Antonia B Hughes.

11 Q. What's your current address?

12 A. 11 Carvel Circle, Edgewater, Maryland 21037.

13 Q. Have you ever had your deposition taken  
 14 before?

15 A. Once.

16 Q. Approximately how long ago?

17 A. Five-ish years.

18 Q. And was it as an expert in a case?

19 A. Yes.

20 Q. What kind of case was it?

21 A. A medical malpractice case.

22 Q. All right. And where was the case located?

23 A. I believe it was Montgomery County here in  
 24 -- It was here in Maryland, Montgomery County.

25 Q. Were you -- Were you an expert for the

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1 plaintiff or the defense?

2 A. Not -- The plaintiff is the one asking for  
 3 injuries?

4 Q. Yes.

5 A. No. For the defense.

6 Q. Do you recall who the attorneys were?

7 A. No.

8 Q. Do you recall the name of the case?

9 A. No.

10 Q. Did you testify -- Did you actually --  
 11 Did you testify at trial?

12 A. No. It was dismissed before trial.

13 Q. Was it dismissed, or settled, or you don't  
 14 know?

15 A. I don't know. I was informed that the case  
 16 had been resolved and to destroy the records.

17 Q. Okay. Do you recall any of the attorneys in  
 18 the case?

19 A. No.

20 Q. Well I'm going to go through a few rules  
 21 regarding this deposition just so we're all on the  
 22 same page. You understand?

23 A. Okay.

24 Q. I'm going to ask you numerous questions  
 25 today about your opinions. If you don't understand my

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1 question, please let me know. Fair?

2 A. Yes.

3 Q. If you answer the question that I ask, I'll  
 4 assume that you understood the question. Fair?

5 A. Yes.

6 Q. At any time you want to take a break, that's  
 7 fine, but I ask that you only request a break after  
 8 you answer a pending question. Fair?

9 A. Okay. Yes.

10 Q. And at any time that you -- that -- during  
 11 the deposition you realize that a ques -- answer you  
 12 gave me was incorrect or incomplete, or you want to  
 13 add something, just please let me know and we can  
 14 always go back. Fair?

15 A. Yes.

16 Q. And you're doing a good job by answering  
 17 verbally, but please don't just shake your head or go  
 18 hmm-umm or uh-huh because it's very difficult for the  
 19 court reporter to -- to transcribe, and that's all we  
 20 have here is the transcription of the deposition. You  
 21 understand?

22 A. Yes.

23 Q. And you're also doing a very good job by  
 24 waiting for me to finish my question before you answer  
 25 and so we don't talk over each other, because that's

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<p style="text-align: right;">Page 6</p> <p>1 also difficult for the court reporter. Fair?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. With respect to the deposition you</p> <p>4 did five years ago, what were the issues in that case?</p> <p>5 A. It was issues of whether or not a medical</p> <p>6 test that had been performed were -- the results were</p> <p>7 given to the surgeon in a timely manner.</p> <p>8 Q. Okay. What medical tests?</p> <p>9 A. It was a chest x-ray.</p> <p>10 Q. Was it a wrongful death case?</p> <p>11 A. The patient subsequently died, but she was</p> <p>12 not deceased during the time that I was --</p> <p>13 Q. And what was --</p> <p>14 A. Involved.</p> <p>15 Q. Sorry.</p> <p>16 What was the alleged misdiagnosis?</p> <p>17 A. Lung cancer.</p> <p>18 Q. Do you recall what hospital?</p> <p>19 A. No.</p> <p>20 Q. Was it, like, Shady Grove?</p> <p>21 A. I -- I don't remember if it was Shady Grove</p> <p>22 or Holy Cross, it was -- I don't -- truly don't</p> <p>23 remember.</p> <p>24 Q. And you're a Registered Nurse?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 8</p> <p>1 college to get your bachelor's in nursing?</p> <p>2 A. Good question. I wanted some different</p> <p>3 opportunities.</p> <p>4 Q. Okay. And I take it you needed your</p> <p>5 bachelor's to go receive a master's?</p> <p>6 A. Yes.</p> <p>7 Q. Did you go straight through from your</p> <p>8 Bachelor's of Science in nursing to your Master's of</p> <p>9 Arts in management?</p> <p>10 A. I had about a year off.</p> <p>11 Q. And during that time were you continually</p> <p>12 employed as a nurse?</p> <p>13 A. Yes. I was full-time employed all of the</p> <p>14 time I was in school.</p> <p>15 Q. And where were you employed?</p> <p>16 A. At that time, Anne Arundel Medical Center in</p> <p>17 Annapolis.</p> <p>18 Q. And you also mentioned in 1983 you became a</p> <p>19 -- a certified operating room nurse?</p> <p>20 A. Yes.</p> <p>21 Q. What does that entail?</p> <p>22 A. The initial certification is an exam based</p> <p>23 on current practices in OR nursing and patient case</p> <p>24 care -- care scenarios.</p> <p>25 Q. So after that period of time did you mostly</p>
<p style="text-align: right;">Page 7</p> <p>1 Q. And why don't you -- if you can briefly go</p> <p>2 through your educational background?</p> <p>3 A. Okay. I graduated from a nursing diploma</p> <p>4 program in 1974, became certified in operating room</p> <p>5 nursing in 1983, and have maintained that</p> <p>6 certification. I received my Bachelor's of Nursing</p> <p>7 from the college of Notre Dame in 1995, and my</p> <p>8 Master's of Arts in administration at the college of</p> <p>9 Notre Dame. Both of those are in Baltimore.</p> <p>10 Q. You received your bachelor's in nursing in</p> <p>11 --</p> <p>12 A. Yes.</p> <p>13 Q. -- 1995?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And so what did you receive in 1974?</p> <p>16 A. A diploma in nursing. It was a different</p> <p>17 type of nursing curriculum, it was a three-year</p> <p>18 program --</p> <p>19 Q. Okay.</p> <p>20 A. -- with some college credits and some</p> <p>21 clinical.</p> <p>22 Q. But you became a Registered Nurse in 19 --</p> <p>23 after you finished in 1974?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Why did you decide to go back to</p>	<p style="text-align: right;">Page 9</p> <p>1 work in an operating room?</p> <p>2 A. Yes. The whole time.</p> <p>3 Q. And that would be at Anne Arundel County?</p> <p>4 A. No. I worked at Anne Arundel for 15 years,</p> <p>5 then I went to Hopkins Bayview, then I went to Calvert</p> <p>6 Memorial down in Prince Frederick, and then went to</p> <p>7 Baltimore Washington Medical Center.</p> <p>8 (Interruption by the reporter.)</p> <p>9 A. Baltimore Washington Medical Center in Glen</p> <p>10 Burnie.</p> <p>11 Q. Okay. Tell me more about your certification</p> <p>12 for an operating room nurse. What does that entail?</p> <p>13 A. It's -- You need two years of eligibility,</p> <p>14 which means you need to have been employed as an OR</p> <p>15 nurse for at least two years. And other than that you</p> <p>16 need to be a Registered Nurse. And other than that it</p> <p>17 is a preparation, studying, reviewing case studies.</p> <p>18 And the organization that administers the test gives</p> <p>19 prep courses and gives you ideas of what material</p> <p>20 should be studied. It's material about generic</p> <p>21 nursing, what would a nurse do, but also specific to</p> <p>22 the OR.</p> <p>23 Q. Okay. So let's get into more specifics</p> <p>24 about that.</p> <p>25 A. Okay.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. What would be the curricula with respect to</p> <p>2 what are the materials that you would be looking at or</p> <p>3 asked to be studying in preparation --</p> <p>4 A. One of them is --</p> <p>5 Q. -- in preparation of the exam?</p> <p>6 A. Okay. One is a textbook called Alexander's</p> <p>7 Care of the Patient in Surgery. Another would be the</p> <p>8 current Guidelines to Perioperative Practice, which is</p> <p>9 published by AORN. Another is Berry &amp; Kohn's, trying</p> <p>10 to remember the title, I think it's Surgical Care.</p> <p>11 Don't quote me on that title, but it's Berry &amp; Kohn's</p> <p>12 is another textbook that's a good basis for</p> <p>13 certification review. They also have flash cards,</p> <p>14 they also have test questions online to help you look</p> <p>15 at the format of the questions.</p> <p>16 Q. And what are the subject areas that you're</p> <p>17 looking at?</p> <p>18 A. Preoperative nursing, intraoperative</p> <p>19 nursing, some equipment questions, some holistic</p> <p>20 questions about materials management, hospital</p> <p>21 administration, staffing, budgets. Some questions on</p> <p>22 cultural diversity, and some -- I think that's the --</p> <p>23 I'm trying to remember the breakdown. It's like a</p> <p>24 breakdown of five categories, but I don't have that in</p> <p>25 my head.</p>	<p style="text-align: right;">Page 12</p> <p>1 Patient-warming devices would be in more on</p> <p>2 hypothermia and how to prevent hypothermia.</p> <p>3 Q. Is that part of the OR certification?</p> <p>4 A. It would be a question like what are SCIP</p> <p>5 guidelines. SCIP guidelines are antibiotics timing,</p> <p>6 normothermia, blood glucose monitoring, not shaving</p> <p>7 the patient, but clipping, the bathing of the patient</p> <p>8 pre-op. Those are the things all sort of encompassed</p> <p>9 in the SCIP guidelines.</p> <p>10 Q. I understand that, but were the SCIP</p> <p>11 guidelines with --</p> <p>12 A. Would they be --</p> <p>13 Q. -- normothermia were there in 1983?</p> <p>14 A. In nineteen -- Are you asking me about my</p> <p>15 test from nineteen --</p> <p>16 Q. Oh yeah.</p> <p>17 A. Oh, I can't remember my test from 1983.</p> <p>18 Q. But I'm looking at the subject areas.</p> <p>19 A. Oh, the subject areas would be similar, but</p> <p>20 the equipment, I don't know that we were talking about</p> <p>21 hypothermia in 1983.</p> <p>22 Q. Okay.</p> <p>23 A. I -- I misunderstood. I thought you meant</p> <p>24 current.</p> <p>25 Q. And I'm looking at what you --</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. And with respect to equipment, what</p> <p>2 equipment would you be asked to --</p> <p>3 A. Things about --</p> <p>4 Q. -- look at?</p> <p>5 A. Things about positioning, safely positioning</p> <p>6 the patient.</p> <p>7 Q. Is that equipment, or is that some -- would</p> <p>8 that be more of patient care?</p> <p>9 A. Both.</p> <p>10 Q. Okay.</p> <p>11 A. It would be both, truly.</p> <p>12 If a patient has a fracture you need to know</p> <p>13 how to safely use the fracture table, that would be an</p> <p>14 equipment, but then also position the patient safely</p> <p>15 so that they don't have any skin or neurological</p> <p>16 injuries being positioned on that table.</p> <p>17 Q. What other equipment?</p> <p>18 A. An overview of an anesthesia machine, how to</p> <p>19 supply -- not to administer anesthesia, but how to</p> <p>20 administer oxygen. There's usually another oxygen</p> <p>21 port, and in an emergency you'd need to know where</p> <p>22 that's located to support a patient.</p> <p>23 Q. Did you go into the different types of</p> <p>24 patient-warming devices?</p> <p>25 A. I would say no. They talk --</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Oh, what did I study.</p> <p>2 Q. Yes.</p> <p>3 A. Okay.</p> <p>4 Q. What subject areas were -- and materials</p> <p>5 were you had to review in preparation of your --</p> <p>6 A. Okay.</p> <p>7 Q. -- exam in 1983?</p> <p>8 A. Probably not the SCIP guidelines, they were</p> <p>9 not in effect in 1983.</p> <p>10 Q. Okay.</p> <p>11 A. They came about in the '90s.</p> <p>12 Q. Okay. You also mentioned --</p> <p>13 And I'm just trying to understand what --</p> <p>14 what is it about a certifi -- what it is that a</p> <p>15 operating nurse that's certified, like what is the</p> <p>16 certification process; what makes you different than</p> <p>17 any other nurse that's not certified, like, what do</p> <p>18 you learn that's different?</p> <p>19 A. Okay. To maintain your certification you</p> <p>20 need -- every five years you need to either retake the</p> <p>21 exam or have at least 30 hours of continuing education</p> <p>22 or a total of 150 during that five-year period. So</p> <p>23 during that five-year period you need to have read and</p> <p>24 studied and completed certification credits to be</p> <p>25 eligible to be -- to renew your certification.</p>

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<p>1 Q. Have you taken any classes on, like, being 2 an expert witness? 3 A. No. 4 Q. Okay. Do you advertise for your services? 5 A. No. 6 Q. Do you know how is it that 3M obtained your 7 name? 8 A. From a professional colleague. 9 Q. Who? 10 A. Two. Sharon Chappy and Joy Don Baker. 11 Q. Sharon? 12 A. Chappy, C-H-A-P-P-Y. 13 Q. And? 14 A. Joy Don, two words, J-O-Y, capital D-O-N, 15 Baker. 16 Q. And are they in Maryland? 17 A. No. 18 Q. Where are they? 19 A. Joy Don's in Texas, and Sharon is in 20 Oshkosh, Wisconsin. 21 Q. And how is it that both of them referred you 22 to 3M? 23 A. I don't know. 24 Q. Okay. 25 A. I -- They said, I referred you because I</p>	<p>1 Did there come a point where you were no 2 longer acting as a nurse and more of a supervisor and 3 educator? 4 A. In the year 2000 I left Anne Arundel to take 5 a managerial role. 6 Q. Okay. 7 A. But did function in the role as an RN 8 circulator on occasion. Not usually total joints, 9 though. 10 Q. Okay. When was the last time you were 11 involved in a total joint arthroplasty? 12 A. In the room as the nurse or in the room 13 supervising? 14 Q. As a nurse. 15 A. Probably 2015. 16 Q. 2015? 17 A. Umm-hmm. 18 THE REPORTER: Your answer, please? 19 A. Yes. Sorry. 2015. Apologize. I don't 20 mean to... 21 Q. Okay. And when you say in 2015, was it on a 22 regular basis, or was it just -- 23 A. No. No. 24 Q. No. Okay. 25 A. That was not my regular daily assignment,</p>
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<p>1 think you're a better qualified witness than either of 2 us, you have more recent clinical experience. I said, 3 thank you. 4 Q. In your experience have you dealt -- have 5 you worked in operating rooms where total joint 6 arthroplasty was performed? 7 A. Yes. 8 Q. Do you work for an orthopedic surgeon or -- 9 A. Directly for an orthopedic surgeon? 10 Q. Yeah. 11 A. No. I've always worked for facilities. 12 Q. Okay. And how long were you involved in 13 actually handling cases of total hip or total knee 14 arthroplasty? 15 A. During my career how long? 16 Q. Yeah. Like what years? Was it a stretch of 17 -- 18 A. You're talking about me being the nurse in 19 the room, or being a supervisor, or being an educator? 20 Q. Let's start with you being a nurse in the 21 room. 22 A. Probably from 19 -- No, let's see -- 1984 to 23 about 2000. 24 Q. Okay. Has it -- Was there -- Did there -- 25 strike that.</p>	<p>1 no. 2 Q. Okay. So roughly speaking between 2000 and 3 2015, approximately how many times a year would you be 4 involved as -- 5 A. Depending on -- 6 (Interruption by the reporter.) 7 Q. -- as a nurse in an operating room in a 8 non-supervisory role, actually doing work? 9 A. So the question is from 2000 to 2015. 10 Q. Yes. 11 A. I don't know that I can pull out a number. 12 Q. Was it like once a month, twice a month, 13 once a year? 14 A. Depending on the year, perhaps once a month. 15 Q. Okay. And since 2000 to 2015, how often 16 would you be involved as a nurse in a total hip or 17 total knee arthroplasty? 18 A. Is that the same question? 19 Q. Well one was more general, in all types of 20 -- 21 I assume you just didn't handle total hip or 22 total knee; correct? 23 A. Correct. But I misunderstood your first 24 question. 25 Q. Okay.</p>



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1 A. I thought you were asking about numbers of  
 2 times I had done total knees or hips from 2000 to  
 3 2015.  
 4 Q. Okay. So my understanding, based on your  
 5 statement, is between 2000 and 2015 you were probably  
 6 involved with one total knee or total hip arthroplasty  
 7 per month.  
 8 A. Correct.  
 9 Q. Okay. What about overall all types of  
 10 surgeries?  
 11 A. Depending upon the month and the year,  
 12 probably once a week.  
 13 Q. Okay. And the rest of the time you were  
 14 acting as a supervisor or an educator.  
 15 A. Correct.  
 16 Q. Okay. Now how long have you been an  
 17 educator?  
 18 A. Since 2007, so -- at full ti -- Well, no.  
 19 Full time since 2007.  
 20 Q. Okay. And as an educator, where are you an  
 21 educator?  
 22 A. Currently I'm an independent practitioner.  
 23 Q. And what does that mean, "independent  
 24 practitioner"?  
 25 A. That means I do a contract with a facility

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1 to coordinate, facilitate a course called Periop 101,  
 2 which is an introductory course for nurses who are not  
 3 familiar with the clinical environment in the OR.  
 4 It's a six-month program. It has some didactic  
 5 material provided by AORN, and then I provide the  
 6 clinical experiences and hopefully put the two  
 7 together for the individuals.  
 8 Q. And what subjects are taught or what areas  
 9 are taught in the Perioperative 101?  
 10 A. I couldn't begin to list them. It's about  
 11 50 modules in the didactic, so to go through and name  
 12 them, I -- I couldn't begin to do that.  
 13 Q. Do you discuss --  
 14 A. I would -- I would miss some.  
 15 Q. Okay. But do you discuss normothermia?  
 16 A. Yes.  
 17 Q. Do you discuss patient prep?  
 18 A. Yes. Not only discuss, but demonstrate and  
 19 teach back.  
 20 Q. Okay. Are there any modules with respect to  
 21 different types of surgeries, such as surgeries  
 22 pertaining to total hip or total knee?  
 23 A. Yes.  
 24 Q. Are total hip and total knee surgeries  
 25 different than other surgeries?

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1 A. The difference is the amount of traffic in  
 2 the room. There are not extra individuals in the room  
 3 other than the staff assigned to that room.  
 4 Q. Why aren't there --  
 5 Why is that?  
 6 A. We want to decrease the traffic, potential  
 7 door openings and closings, any unnecessary movement.  
 8 Q. Why? If you know.  
 9 A. The best answer is I've read that that will  
 10 help with patient outcomes.  
 11 Q. Why?  
 12 A. It's not necessarily a why, but it's a  
 13 literature suggests that if there is less movement and  
 14 less door openings, the patient outcome will be  
 15 improved.  
 16 Q. I understand that's the literature, but  
 17 what's your understanding as to the reason why that's  
 18 the case; if you know?  
 19 A. I don't, other than reading the literature,  
 20 know.  
 21 Q. Yeah, but what is -- I mean the literature  
 22 just doesn't say --  
 23 A. It's --  
 24 Q. -- doesn't say, you know, less traffic or  
 25 less opening of doors. Does it give a reason that

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1 you're -- I mean, pretend I'm a student and I say,  
 2 okay, but why is it different for total hip and total  
 3 knee not to -- to have less traffic?  
 4 A. There is a prosthesis involved. This is not  
 5 just total hips and total knees, I will go back and  
 6 clarify your question. It's also for any patient  
 7 that's having a prostheses; whether it's a hernia  
 8 repair with mesh, a breast implant after  
 9 reconstruction. Any patient that will have a  
 10 potential for an -- a implant we want to be sure that  
 11 the traffic is to a minimum, --  
 12 Q. What is --  
 13 A. -- to decrease door openings. We want to  
 14 keep the positive pressure that's in the room going  
 15 and circulating the air as best as possible. When the  
 16 door opens and closes numerous times, that positive  
 17 pressure is disrupt -- potentially disrupted.  
 18 Q. But, so what? The temperature -- It's  
 19 disrupted. How does that affect the patient outcome?  
 20 A. The correlation between the research is that  
 21 there is a correlation between disruption of the  
 22 positive pressure and increased risk for surgical-site  
 23 infections.  
 24 Q. And do you have a -- a -- an article that  
 25 you could refer me to, a peer-reviewed article?

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<p>1 A. Yes.</p> <p>2 Q. And by the way, --</p> <p>3 A. But I don't -- I know -- I know --</p> <p>4 Q. -- she can't give you any answers.</p> <p>5 A. No, I know. I'm trying to remember the name</p> <p>6 of the author. I'm sorry.</p> <p>7 I believe it's on my statement. I believe I</p> <p>8 referred that -- to that article in my statement.</p> <p>9 MR. ASSAAD: Let's mark this as Exhibit 1.</p> <p>10 (Hughes Exhibit 1 marked for</p> <p>11 identification.)</p> <p>12 BY MR. ASSAAD:</p> <p>13 Q. What's been marked as Exhibit 1 is a copy of</p> <p>14 your expert report provided to us on June 2nd, 2017 by</p> <p>15 -- by the defense in this case.</p> <p>16 Before you look at it to determine whether</p> <p>17 or not -- or to point me to the citation that you're</p> <p>18 referring to, is this a correct and complete copy of</p> <p>19 your expert report?</p> <p>20 A. (Witness reviewing exhibit.) Yes.</p> <p>21 Q. Have you had a chance to review your report</p> <p>22 before your deposition today?</p> <p>23 A. Yes.</p> <p>24 Q. Are there any corrections that you want to</p> <p>25 make to your report before we begin discussing it?</p>	<p>1 With respect to your references 1 through 7</p> <p>2 on page 7 of your report, did you independently</p> <p>3 provide these references, or were these given to you</p> <p>4 by somebody?</p> <p>5 A. Oh, no. I provided them.</p> <p>6 Q. Okay. Do you know any of the authors that</p> <p>7 you cite in this report?</p> <p>8 A. I do not.</p> <p>9 Q. Okay. What reference are you referring to</p> <p>10 with respect to --</p> <p>11 A. I believe it was number 2.</p> <p>12 MS. LEWIS: Let him finish his question.</p> <p>13 THE WITNESS: Oh, I'm sorry. I'm sorry.</p> <p>14 Q. What reference were you -- were you</p> <p>15 referring to with respect to traffic and opening</p> <p>16 doors?</p> <p>17 A. Number 2, Andersson, and number 3, Parah, I</p> <p>18 believe are the ones I cited.</p> <p>19 Q. Okay. So Andersson sta -- is titled</p> <p>20 "Traffic flow in the operating room: an explorative</p> <p>21 and description study of air quality during orthopedic</p> <p>22 trauma implant surgery."</p> <p>23 First of all, orthopedic trauma implant</p> <p>24 surgery is different than elective total hip and total</p> <p>25 knee arthroplasty; correct?</p>
Page 23	Page 25
<p>1 A. I think the only correction I -- (Witness</p> <p>2 reviewing exhibit.)</p> <p>3 No. I do not.</p> <p>4 Q. Okay. And is your report a complete list of</p> <p>5 all the opinions in this -- in the case that you have?</p> <p>6 A. That I have --</p> <p>7 Q. Yes.</p> <p>8 A. -- personally? Yes.</p> <p>9 Q. Okay. And everything in your --</p> <p>10 And all the material that you rely upon to</p> <p>11 support your opinions are in the report; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And you wrote this report yourself;</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Did you have any help writing this</p> <p>17 report?</p> <p>18 A. No.</p> <p>19 Q. Okay. Did anyone offer any comments to you</p> <p>20 regarding the report?</p> <p>21 A. No.</p> <p>22 Q. Okay. Did you discuss your opinions with</p> <p>23 anyone besides counsel?</p> <p>24 A. No.</p> <p>25 Q. Did you look at any other --</p>	<p>1 A. It's --</p> <p>2 Depending on the facility and the</p> <p>3 classification. There are some classifications that</p> <p>4 put the two together, and some that separate. And I</p> <p>5 don't know which one he used without looking at the</p> <p>6 article.</p> <p>7 Q. And I take it you've read all these</p> <p>8 articles; correct?</p> <p>9 A. Yes.</p> <p>10 Q. All right.</p> <p>11 A. Yes.</p> <p>12 Q. Like from beginning to end, not just the</p> <p>13 abstract.</p> <p>14 A. Yes, --</p> <p>15 Q. Okay.</p> <p>16 A. -- from beginning to end.</p> <p>17 Q. And it says something about "description</p> <p>18 study on air quality." What does air quality have to</p> <p>19 do with traffic flow?</p> <p>20 A. I'd have to go back and look at the study,</p> <p>21 whether he was measuring particles or current. I</p> <p>22 don't remember.</p> <p>23 Q. Well assume he was measuring particles, what</p> <p>24 do particles have to do with air quality?</p> <p>25 MS. LEWIS: Do you want to show her the</p>



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<p style="text-align: right;">Page 26</p> <p>1 article so she can look to see?</p> <p>2 MR. ASSAAD: I don't have it.</p> <p>3 A. Okay. Ask your question again. I'm sorry.</p> <p>4 Q. Well you cite this study yourself as -- you</p> <p>5 know, you read this; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And you've read it in preparation of writing</p> <p>8 your report; correct?</p> <p>9 A. Yes. And that was two months ago.</p> <p>10 Q. I understand that.</p> <p>11 A. Okay.</p> <p>12 Q. And did you look at the study previously</p> <p>13 before -- in preparation of your deposition?</p> <p>14 A. Yes, but again, awhile ago.</p> <p>15 Q. Okay.</p> <p>16 A. Not last night.</p> <p>17 Q. Well what's "awhile ago"?</p> <p>18 A. Three weeks, four weeks.</p> <p>19 Q. Okay. So you mentioned either particles or</p> <p>20 currents; correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. You're just not sure which one it was</p> <p>23 he was referring to.</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Just assume that he was referring to</p>	<p style="text-align: right;">Page 28</p> <p>1 increase the risk to the patient of a potential for a</p> <p>2 surgical site infection."</p> <p>3 Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So does that refresh your memory as</p> <p>6 to what the article states?</p> <p>7 MS. LEWIS: Objection, form.</p> <p>8 Q. "Yes" or "no"?</p> <p>9 A. My understanding is that it goes into the</p> <p>10 next sentence.</p> <p>11 Q. I understand, but what I'm trying to</p> <p>12 understand is how does air current or particles</p> <p>13 increase the risk to the patient of a potential for a</p> <p>14 surgical-site infection; if you know. If you don't</p> <p>15 know, that's fine.</p> <p>16 A. Okay. I don't know.</p> <p>17 Q. Okay. You're not an engineer; correct?</p> <p>18 A. That's correct.</p> <p>19 Q. So you don't consider yourself an expert in</p> <p>20 airflow; correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And you're not a medical doctor; correct?</p> <p>23 A. That's correct.</p> <p>24 Q. So you don't consider yourself an expert in</p> <p>25 infectious diseases?</p>
<p style="text-align: right;">Page 27</p> <p>1 particles. How would particles affect air quality?</p> <p>2 MS. LEWIS: Objection to the form of the</p> <p>3 question and foundation. And again if -- I mean,</p> <p>4 you're asking her to guess on what the article said,</p> <p>5 so unless -- if you don't have a copy of the article</p> <p>6 --</p> <p>7 MR. ASSAAD: I'm not asking her to guess.</p> <p>8 She's the one that cited it. I assume as an expert</p> <p>9 in this case that's going to offer opinions and you</p> <p>10 refer to an article, you actually know what the</p> <p>11 article states.</p> <p>12 MS. LEWIS: Well no, this is not a memory</p> <p>13 game, Gabe.</p> <p>14 BY MR. ASSAAD:</p> <p>15 Q. Do you know what the article states, ma'am?</p> <p>16 A. Not without looking at it again.</p> <p>17 Q. Okay. So sitting here today you don't know</p> <p>18 what the article states.</p> <p>19 A. Not looking at it again today.</p> <p>20 Q. Let's look what you used for number 2.</p> <p>21 A. Okay.</p> <p>22 Q. Let's look where it states that you cite to</p> <p>23 number 2. If you look at page 3 it says: According</p> <p>24 to published literature, increased 'door openings'</p> <p>25 causes more air current into the operating room and</p>	<p style="text-align: right;">Page 29</p> <p>1 A. No.</p> <p>2 Q. You don't consider yourself an expert in</p> <p>3 orthopedics?</p> <p>4 A. No.</p> <p>5 Q. You don't consider yourself an expert in</p> <p>6 anesthesiology?</p> <p>7 A. That's correct.</p> <p>8 Q. You don't consider yourself an expert in</p> <p>9 hospital ventilation?</p> <p>10 A. No.</p> <p>11 Q. You don't consider yourself an expert in</p> <p>12 aerobiology?</p> <p>13 A. No. Whatever that is.</p> <p>14 Q. You don't consider yourself an expert in</p> <p>15 operating room design?</p> <p>16 A. No.</p> <p>17 Q. Okay. You don't consider yourself an expert</p> <p>18 in microbiology?</p> <p>19 A. That's correct.</p> <p>20 Q. Have you ever designed a medical device?</p> <p>21 A. No.</p> <p>22 Q. So you don't consider yourself an expert in</p> <p>23 the design of medical devices; correct?</p> <p>24 A. Correct.</p> <p>25 Q. You don't consider yourself an expert with</p>

<p style="text-align: right;">Page 30</p> <p>1 respect to FDA clearance; correct?</p> <p>2 A. No.</p> <p>3 Q. Correct; right?</p> <p>4 A. That is correct. I am not an expert on FDA</p> <p>5 clearance.</p> <p>6 Q. You mentioned that, you know, surgeries such</p> <p>7 as hernia prosthesis or breast implant surgeries, that</p> <p>8 the opening of doors and traffic could increase the</p> <p>9 risk of surgical-site infection; correct?</p> <p>10 A. In some facili --</p> <p>11 MS. LEWIS: Objection to the form of the</p> <p>12 question.</p> <p>13 A. -- I didn't say it increased -- No. State</p> <p>14 that --</p> <p>15 Q. Maybe I misunderstood you.</p> <p>16 A. Yeah.</p> <p>17 Q. So what is it about those surgeries that are</p> <p>18 significant?</p> <p>19 A. In some facilities they are treated as the</p> <p>20 same as a total joint and work -- the facility and the</p> <p>21 staff work very hard to restrict traffic in any room</p> <p>22 that has a prosthesis.</p> <p>23 Q. Okay. And it's -- based on what I'm</p> <p>24 understanding is that they want to restrict traffic</p> <p>25 because the more traffic that exists can increase the</p>	<p style="text-align: right;">Page 32</p> <p>1 if -- when there is a disturbance to that, there is an</p> <p>2 increased potential risk for surgical-site infection.</p> <p>3 Q. Do you know what causes surgical-site</p> <p>4 infection?</p> <p>5 A. A variety of factors, most often,</p> <p>6 unfortunately, the patient.</p> <p>7 Q. Okay. And your basis?</p> <p>8 A. Literature reading.</p> <p>9 Q. What's --</p> <p>10 What are you citing to?</p> <p>11 A. I'm not citing anything. This is from my</p> <p>12 knowledge --</p> <p>13 Q. Okay.</p> <p>14 A. -- as a practicing nurse.</p> <p>15 Q. Okay. But your knowledge is not based on</p> <p>16 your education in infectious diseases or anything like</p> <p>17 that; is it?</p> <p>18 A. No.</p> <p>19 Q. And you would defer to an infectious disease</p> <p>20 expert with respect to what causes a surgical-site</p> <p>21 infection; correct?</p> <p>22 A. Yes.</p> <p>23 Q. But when I said what causes a surgical-site</p> <p>24 infection, is it -- you agree with me that it's a</p> <p>25 bacteria; correct?</p>
<p style="text-align: right;">Page 31</p> <p>1 risk of a surgical-site infection; correct?</p> <p>2 MS. LEWIS: Objection to the form.</p> <p>3 A. The traffic --</p> <p>4 MR. ASSAAD: Basis? Basis?</p> <p>5 MS. LEWIS: Foundation.</p> <p>6 MR. ASSAAD: Okay.</p> <p>7 A. The traffic increases the door openings and</p> <p>8 closings. That's my statement.</p> <p>9 Q. Okay. Do you know whether or not, sitting</p> <p>10 here today, that the -- the number of people in an</p> <p>11 operating room can affect the risk of a surgical-site</p> <p>12 infection in total hip or total knee arthroplasty?</p> <p>13 MS. LEWIS: Same objection.</p> <p>14 A. No.</p> <p>15 Q. Okay.</p> <p>16 A. I do not.</p> <p>17 Q. Is there something about a prosthesis such</p> <p>18 as a total hip or total knee that the opening of the</p> <p>19 door increases the risk of surgical-site infection?</p> <p>20 A. Again --</p> <p>21 MS. LEWIS: Same objection.</p> <p>22 A. -- disturbance to the positive airflow in</p> <p>23 the room.</p> <p>24 Q. What does that mean? I mean, so what?</p> <p>25 A. That's what the literature has shown that</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Occasionally.</p> <p>2 Q. Occasionally?</p> <p>3 A. Yeah. Sometimes it's not bacteria. It can</p> <p>4 be a fungus, can be a spore, --</p> <p>5 Q. Let's --</p> <p>6 A. -- can be a prion. There are more than just</p> <p>7 bacteria out there.</p> <p>8 Q. Let's just focus on total hip and total knee</p> <p>9 arthroplasty.</p> <p>10 Would you agree with me that with respect to</p> <p>11 a total hip or total knee arthroplasty that the -- the</p> <p>12 most likely cause of a periprosthetic joint infection</p> <p>13 is a bacteria?</p> <p>14 MS. LEWIS: Objection, form.</p> <p>15 A. I don't know that for a fact. I don't have</p> <p>16 that --</p> <p>17 Q. Okay.</p> <p>18 A. -- fact in front of me.</p> <p>19 Q. Do you know the difference between a -- a</p> <p>20 superficial surgical-site infection and a deep joint</p> <p>21 infection?</p> <p>22 A. Yes.</p> <p>23 Q. What's the difference?</p> <p>24 A. A superficial is as it says. It may be just</p> <p>25 the skin and the subcutaneous tissue that's involved.</p>

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1 A deep will go further into the wound as it's  
2 described as deep.  
3 Q. Okay. Do you know the difference between a  
4 superficial surgical-site infection and a  
5 periprosthetic joint infection?  
6 A. No.  
7 Q. Do you know when -- Strike that.  
8 By the way, looking at Exhibit 1, your  
9 report, the first paragraph, are these all the  
10 documents you reviewed or were provided to you prior  
11 to you formulating your opinions in paragraph one?  
12 A. Yes.  
13 Q. Okay. So you looked at the Master Long Form  
14 Complaint and Jury Demand; correct?  
15 A. Yes.  
16 Q. You looked at Defendants' Master Answer to  
17 Plaintiffs' Master Long Form Complaint and Jury  
18 Demand; correct?  
19 A. Yes.  
20 Q. You looked at the Memorandum in Support of  
21 Defendants' Proposed Phase I Scheduling Order?  
22 A. Yes.  
23 Q. Why'd you look at that?  
24 A. It was provided to me. It was in a group of  
25 documents sent to me.

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1 Q. And you looked at the expert report of  
2 Michael J. Stonnington, M.D.?  
3 A. Yes.  
4 Q. Anything else you looked at, besides the  
5 literature that's referenced?  
6 A. Not that I recall.  
7 Q. Did you look at any other expert --  
8 Were you provided any other expert reports?  
9 A. No.  
10 Q. So you don't -- you haven't looked at the  
11 report of Dr. Mont?  
12 A. No.  
13 Q. Have you read any depositions?  
14 A. No.  
15 Q. You know what a deposition is.  
16 A. Yes, I do. I'm trying to recall, that's  
17 all.  
18 Q. Okay.  
19 A. No. The answer is no.  
20 Q. So you haven't looked at any of the defense  
21 experts; correct?  
22 A. No.  
23 Q. So you haven't looked at the report of Dr.  
24 Borak.  
25 A. No.

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1 Q. Or Dr. Hawfeld -- or Mr. Hawfeld, Dr.  
2 Hawfeld [ph]?  
3 A. No.  
4 Q. Have you looked at the report of Dr. Wenzel?  
5 A. No.  
6 Q. And you haven't looked at any of the reports  
7 of any of the engineering experts; correct?  
8 A. I may have looked at one of those, --  
9 Q. Was it --  
10 A. -- but I don't remember which one.  
11 Q. -- Dr. Abraham?  
12 A. I don't remember which name it was.  
13 Q. Okay. What was in the report?  
14 A. It was an airflow report showing the airflow  
15 from the center of the room down from the ceiling  
16 tiles out to the exhaust on the side of the room.  
17 Q. And were they, like, colored dots?  
18 A. No. I thought they were flow, what I would  
19 call flow diagrams.  
20 Q. Okay. But were they, like, streamlines?  
21 A. I guess you could describe it that way.  
22 Q. Okay. Were they different --  
23 A. I would call it flow.  
24 Q. Were they different colors?  
25 A. I don't remember.

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1 Q. Did you use that report in any way in -- to  
2 --  
3 Did you rely on the report in any way in  
4 your opinion?  
5 A. No.  
6 Q. Okay.  
7 A. I believe I read them after I had completed  
8 my statement.  
9 Q. Okay. Have you looked at the flow done --  
10 done by Dr. Elghobashi?  
11 A. No.  
12 Q. Have you looked at any expert reports by Dr.  
13 Jarvis?  
14 A. No.  
15 Q. Okay. Is there anything else you looked at  
16 besides what we've discussed today?  
17 A. No.  
18 Q. Any other literature you looked at besides  
19 what's --  
20 A. No.  
21 Q. -- been -- been marked under your references  
22 in your expert report, --  
23 A. No.  
24 Q. -- Exhibit 1?  
25 A. No.

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<p style="text-align: right;">Page 38</p> <p>1 Q. Okay. Have you looked at the manual, 2 operating manual for the Bair Hugger? 3 A. No. 4 Q. Have you looked at a Bair Hugger? 5 A. Yes. 6 Q. Have you taken it apart? 7 A. No. 8 Q. Have you used a Bair Hugger? 9 A. Yes. 10 Q. Approximately how many times? 11 A. Every time I took care of a patient. 12 Q. So you're the -- you'd be the one to put the 13 blanket on the patient? 14 A. Correct. And attach -- help with anesthesia 15 to attach it, yes. 16 Q. Okay. Would you control the Bair Hugger, 17 turn it on and off? 18 A. Occasionally. Sometimes -- Most of the time 19 anesthesia did. 20 Q. Do you know what model Bair Hugger you used? 21 A. No. 22 Q. Do you know whether -- if it was white or 23 blue? 24 A. Blue. 25 (Hughes Exhibit 2 marked for</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. So you didn't provide the articles to 2 counsel? 3 A. I did. 4 Q. Okay. 5 A. With my statement is what I'm saying. 6 Q. Okay. 7 A. With my statement. 8 Q. All right. Did you -- 9 Did you create any notes? 10 A. No. 11 Q. Okay. So going through this subpoena, 12 number 1: "All documents reviewed by the deponent in 13 anticipation of or in preparation for this 14 deposition," we've already discussed that; correct? 15 A. Yes. 16 Q. Okay. Number 2: "All correspondence and 17 documents between the deponent and non-lawyers..." 18 Have you -- 19 Did you have any correspondence with anyone 20 besides counsel? 21 A. No. 22 Q. Number 3, you said you have no notes; 23 correct? 24 A. Correct. 25 Q. Okay. "Copies of all documents provided to</p>
<p style="text-align: right;">Page 39</p> <p>1 identification.) 2 BY MR. ASSAAD: 3 Q. What's been marked as Exhibit 2 is a 4 subpoena issued by the plaintiffs to you on June 7, 5 2017 for documents to be produced in this case. 6 Do you recall seeing this subpoena? 7 A. Yes. 8 Q. When did you first see the subpoena? 9 A. Don't know the date. It was emailed to me. 10 Q. Was it before June 21st, 2017? 11 A. I can't answer that. I don't truly remember 12 the date. 13 Q. So it's possible you seen the subpoena after 14 June 21st, 2017? 15 A. I can't answer. 16 Q. Okay. What did you do when you received the 17 subpoena? 18 A. I received an email saying that it would be 19 coming, and so I read it. 20 Q. Okay. Did you go through the subpoena? 21 A. Yes. 22 Q. Did you provide documents responsive to this 23 subpoena to counsel? 24 A. Not other than my statement. I provided the 25 documents with my statement.</p>	<p style="text-align: right;">Page 41</p> <p>1 the deponent by Defendants' counsel..." 2 Did you provide -- Did you have any of 3 those? 4 A. Notes, or articles? 5 Q. Articles. 6 A. I've -- I provided them. 7 Q. But the -- 8 I'm just talking about were any -- were any 9 of those articles provided to you? 10 A. Given to me? 11 Q. Yeah. 12 A. No. 13 Q. Okay. Number 6, a list of all books, 14 treatises and articles authored or coauthored by the 15 deponent. Do you have a list -- 16 Do you have any peer-reviewed publications? 17 A. I have one related to safe patient care -- 18 Q. Is it -- 19 A. -- in the AORN Journal. 20 Q. Okay. Is it -- Was it peer reviewed? 21 A. Yes. 22 Q. Okay. Is it listed here? 23 A. It's a peer-reviewed journal. 24 Q. Okay. But was your article peer reviewed? 25 A. I don't know, to tell you the truth.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Probably, yes.</p> <p>2 Q. Okay. Do you recall receiving comments on</p> <p>3 the article from other -- from colleagues in your</p> <p>4 field?</p> <p>5 A. No.</p> <p>6 Q. Okay. And is it listed under your</p> <p>7 publications and presentations in your CV?</p> <p>8 A. I believe so. If it's not, it's -- I</p> <p>9 apologize for the omission.</p> <p>10 I don't know if it is or not, to tell you</p> <p>11 the truth. It was a "how to," rather than a peer</p> <p>12 type.</p> <p>13 (Hughes Exhibit 3 marked for</p> <p>14 identification.)</p> <p>15 THE WITNESS: I don't know if it's there or</p> <p>16 not, to tell you the truth. (Witness reviewing</p> <p>17 exhibit.) Yes. "Developed competency statements,"</p> <p>18 yes.</p> <p>19 BY MR. ASSAAD:</p> <p>20 Q. Okay. And that was published --</p> <p>21 A. This -- "Implementing AORN recommended</p> <p>22 practices..." It's one, two, three, fourth, fifth one</p> <p>23 down: "Implementing AORN Recommended Practices for a</p> <p>24 Safe Environment of Care" --</p> <p>25 (Interruption by the reporter.)</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. ASSAAD: Correct.</p> <p>2 MS. LEWIS: -- but it -- but it is in her</p> <p>3 CV.</p> <p>4 BY MR. ASSAAD:</p> <p>5 Q. Do you agree that providing a safe</p> <p>6 environment for every patient undergoing a surgical or</p> <p>7 other invasive procedure is imperative?</p> <p>8 A. Yes.</p> <p>9 Q. Do you agree that -- Strike that.</p> <p>10 Do you have an engagement agreement with</p> <p>11 defense counsel?</p> <p>12 A. No.</p> <p>13 Q. Have you produced -- Strike that.</p> <p>14 When was the last invoice that you provided</p> <p>15 to defense counsel?</p> <p>16 A. June.</p> <p>17 Q. For the --</p> <p>18 For your time in June?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 A. Yes.</p> <p>22 Q. And it's my understanding that you only</p> <p>23 provided two invoices in this case; correct?</p> <p>24 A. Yes.</p> <p>25 Q. How much time have you spent in July on this</p>
<p style="text-align: right;">Page 43</p> <p>1 A. "Implementing AORN Recommended Practices For</p> <p>2 a Safe Environment of Care," August 2013, Volume 98,</p> <p>3 Number 2, AORN Journal.</p> <p>4 Q. Did you provide a copy of that journal to</p> <p>5 counsel?</p> <p>6 A. I did not. I believe they retrieved it</p> <p>7 themselves.</p> <p>8 Q. You understand that the subpoena required</p> <p>9 you to do a search and produce articles and documents</p> <p>10 that you've authored; correct?</p> <p>11 A. Umm-hmm.</p> <p>12 THE REPORTER: Your answer, please?</p> <p>13 Q. Is that a "yes"?</p> <p>14 A. Yes.</p> <p>15 Q. And sitting here today, you did not provide</p> <p>16 that article to counsel; correct?</p> <p>17 A. Correct.</p> <p>18 MS. LEWIS: Where does it say she's</p> <p>19 supposed to produce articles that she's authored?</p> <p>20 MR. ASSAAD: Number 6, a list of books,</p> <p>21 treatises and articles authored or co-authored by the</p> <p>22 deponent.</p> <p>23 MS. LEWIS: That's a list, not to produce.</p> <p>24 MR. ASSAAD: Okay. Okay.</p> <p>25 MS. LEWIS: There's not a list --</p>	<p style="text-align: right;">Page 45</p> <p>1 case?</p> <p>2 A. I think none in July. I think the next</p> <p>3 invoice will be for August time. I'll have to -- I'll</p> <p>4 have to look.</p> <p>5 Q. So you spent -- you spent --</p> <p>6 A. No. There would be -- No. Four hours in</p> <p>7 June -- or July, I'm sorry.</p> <p>8 Q. Okay. And that was what we discussed before</p> <p>9 when you prepared for this deposition.</p> <p>10 A. Correct.</p> <p>11 Q. Okay. So four hours in July. And what</p> <p>12 about in August to date?</p> <p>13 A. To date, probably another 12.</p> <p>14 Q. Twelve hours? So you've spent 12 hours</p> <p>15 between --</p> <p>16 A. I'd have to look at my calendar.</p> <p>17 Q. Okay. And you keep detailed billing</p> <p>18 records; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And it's important to be accurate; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do you have a correspondence file?</p> <p>23 A. "Correspondence file"?</p> <p>24 Q. Like a file where you keep all your, like --</p> <p>25 Strike that.</p>



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<p style="text-align: right;">Page 46</p> <p>1 You have no correspondence at all; correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Have you discussed your opinions with</p> <p>4 any other expert in this case?</p> <p>5 A. No.</p> <p>6 Q. Do you know any of the other experts in this</p> <p>7 case?</p> <p>8 A. I do not.</p> <p>9 Q. Do you know who Dr. Mont is?</p> <p>10 A. Do not.</p> <p>11 Q. Any email with anyone besides counsel in</p> <p>12 this case?</p> <p>13 A. No.</p> <p>14 Q. Besides your report, are there any other</p> <p>15 electronic files that you have, like that have been</p> <p>16 saved on your computer?</p> <p>17 A. No.</p> <p>18 Q. Have you looked at any other forced-air</p> <p>19 warming devices?</p> <p>20 A. No.</p> <p>21 Q. Do you even know of any other forced-air</p> <p>22 warming devices?</p> <p>23 A. I do not.</p> <p>24 Q. Do you know of any other patient-warming</p> <p>25 devices?</p>	<p style="text-align: right;">Page 48</p> <p>1 antibiotic, correct antibiotic dosing, correct dosing</p> <p>2 related to patient weight. It has to do with</p> <p>3 clipped -- shaving -- not shaving, but clipping the</p> <p>4 hair. It has to do with normothermia, and it has to</p> <p>5 do with blood glucose. And I think there's another</p> <p>6 one, prepping.</p> <p>7 Q. That's --</p> <p>8 A. It's --</p> <p>9 Q. That's SCIP in general.</p> <p>10 A. Correct.</p> <p>11 Q. Okay. But SCIP 10 deals with normothermia.</p> <p>12 A. All of them. They're all part of the SCIP</p> <p>13 protocol.</p> <p>14 Q. But you know there's different numbers, --</p> <p>15 A. Yes.</p> <p>16 Q. -- like there's SCIP 1 through 10.</p> <p>17 A. So I --</p> <p>18 If SCIP 10 deals with normothermia I'm not</p> <p>19 aware of that.</p> <p>20 Q. Okay.</p> <p>21 A. I have no knowledge of that one.</p> <p>22 Q. Do you know whether or not the SCIP protocol</p> <p>23 that pertains to maintaining normothermia still</p> <p>24 exists?</p> <p>25 A. Yes. As far as I know --</p>
<p style="text-align: right;">Page 47</p> <p>1 A. No.</p> <p>2 Q. Have you heard of the HotDog?</p> <p>3 A. I have heard of it, but I've never seen it</p> <p>4 or used it.</p> <p>5 Q. Do you know who Dr. Scott Augustine is?</p> <p>6 A. I recognize the name.</p> <p>7 Q. How do you recognize the name?</p> <p>8 A. From Augustine Medical. From years ago when</p> <p>9 Bair Hugger was owned by Augustine.</p> <p>10 Q. Okay. Have you heard of anything from --</p> <p>11 Strike that.</p> <p>12 Have you heard any information regarding Dr.</p> <p>13 Augustine in this case?</p> <p>14 A. No.</p> <p>15 Q. What was your experience with Augustine</p> <p>16 Medical?</p> <p>17 A. I saw the display at a vendor fair and</p> <p>18 learned about it there, and then used it in my work</p> <p>19 practice.</p> <p>20 Q. Are you familiar with the SCIP 10 protocols</p> <p>21 with respect to maintaining normothermia?</p> <p>22 A. Yes.</p> <p>23 Q. And what is your understanding of the SCIP</p> <p>24 10 protocol?</p> <p>25 A. It has to do with antibi -- correct</p>	<p style="text-align: right;">Page 49</p> <p>1 As far as I know, yes, it does still exist.</p> <p>2 Q. Would you be surprised if I told you that it</p> <p>3 no longer exists?</p> <p>4 A. Yes, I would.</p> <p>5 Q. Okay. So you've been asked to be an expert</p> <p>6 in this case; correct?</p> <p>7 A. Yes.</p> <p>8 Q. Do you understand as being an expert --</p> <p>9 Strike that.</p> <p>10 You agree with me that as an expert you're</p> <p>11 to be objective; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Not to be biased for one side or the other</p> <p>14 in this case; correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Not to be an advocate for one side or the</p> <p>17 other; correct?</p> <p>18 A. That's correct.</p> <p>19 Q. All right. I understand that you have done</p> <p>20 only other one deposition. Let's talk about your</p> <p>21 expert legal work.</p> <p>22 Have you been retained by other law firms to</p> <p>23 review cases?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And approximately how many times?</p>



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<p>1 A. Ten.</p> <p>2 Q. Ten. When did you start becoming -- or</p> <p>3 start acting as an expert?</p> <p>4 A. Probably in the '90s.</p> <p>5 Q. '90s.</p> <p>6 A. I don't know that I can give you a specific</p> <p>7 date.</p> <p>8 Q. And out of the 10 times, it's my</p> <p>9 understanding that you only have given one deposition</p> <p>10 until today.</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And out of those 10, were they all</p> <p>13 medical malpractice cases?</p> <p>14 A. Yes.</p> <p>15 Q. So would this be the first one that dealt</p> <p>16 with a product liability case?</p> <p>17 A. Yes.</p> <p>18 Q. And out of those -- is 10 --</p> <p>19 You said approximately 10; correct?</p> <p>20 A. Approximately, yes.</p> <p>21 Q. Would you --</p> <p>22 What percentage of the cases that you've</p> <p>23 been retained on as an expert were for the plaintiff</p> <p>24 as compared to the defendant?</p> <p>25 A. I believe I was all -- they were all for the</p>	<p>1 A. No.</p> <p>2 Q. Do you believe a nurse can be negligent and</p> <p>3 cause harm?</p> <p>4 A. Yes.</p> <p>5 Q. Do you believe a medical device company can</p> <p>6 make a bad product?</p> <p>7 A. Yes.</p> <p>8 Q. You seem unsure about that answer.</p> <p>9 A. I think there would be a lot of steps in the</p> <p>10 process before the product would be available to --</p> <p>11 for use with patient care.</p> <p>12 Q. Okay.</p> <p>13 A. There are a lot of safeguards with the FDA.</p> <p>14 Q. But you're not an expert in regulatory;</p> <p>15 correct?</p> <p>16 A. Not an -- Not an expert.</p> <p>17 Q. Okay. You are aware of medical products</p> <p>18 that have been FDA approved or cleared that end up</p> <p>19 being recalled; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. So you agree with me it's fair to say</p> <p>22 that if a device is in the market that you assume that</p> <p>23 the device must not be defective; correct?</p> <p>24 MS. LEWIS: Objection, form.</p> <p>25 A. I don't know that I can assume one way or</p>
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<p>1 defendant.</p> <p>2 Q. Okay. Why is that?</p> <p>3 A. Because I was looking at nursing practice</p> <p>4 and I wanted to be sure the nursing practice was</p> <p>5 correct, and it was.</p> <p>6 Q. But why -- why is it that you haven't worked</p> <p>7 for any plaintiffs?</p> <p>8 A. I haven't been asked.</p> <p>9 Q. Okay. Would you work for a plaintiff?</p> <p>10 A. I don't know. Can't answer that question.</p> <p>11 Q. I mean, you do agree that medical</p> <p>12 malpractice exists and occurs; correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And you do --</p> <p>15 A. But I'm not a physician.</p> <p>16 Q. I understand that. But you work in -- in</p> <p>17 a -- you -- you are a nurse; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And in a majority of the cases that you were</p> <p>20 a nurse on medical malpractice cases; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And let me ask you this. Out of the</p> <p>23 cases that you worked in a medical malpractice case</p> <p>24 did you ever look at the medical records and determine</p> <p>25 that a nurse was negligent?</p>	<p>1 the other.</p> <p>2 Q. Okay. Has there ever come a time in your</p> <p>3 career that you would not use a device because you</p> <p>4 didn't think it was safe for the patient?</p> <p>5 A. Yes.</p> <p>6 Q. What device was that?</p> <p>7 A. It was a screw implant, and --</p> <p>8 Q. Pedicle screw?</p> <p>9 A. Umm-hmm. No, not pedicle. A different --</p> <p>10 orthopedic screw, but it was packaged in such a way</p> <p>11 that it was not -- we were not able to open the</p> <p>12 product without contaminating it.</p> <p>13 Q. Okay.</p> <p>14 A. So I asked not to -- we couldn't use it.</p> <p>15 Q. It was a one-time experience, or just you</p> <p>16 told the hospital --</p> <p>17 A. No, --</p> <p>18 Q. -- we're not going to use it?</p> <p>19 A. -- we told the vendor and the surgeon and</p> <p>20 the -- they needed to go back to redesign the</p> <p>21 packaging.</p> <p>22 Q. Okay.</p> <p>23 MS. LEWIS: Let him finish the question.</p> <p>24 Q. So you --</p> <p>25 So it was the packaging that you thought was</p>

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<p style="text-align: right;">Page 54</p> <p>1 defective; correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Any other experience?</p> <p>4 A. No.</p> <p>5 Q. Do you agree that preventable injuries to</p> <p>6 patients that are caused during medical care are a</p> <p>7 leading cause of death in the U.S.?</p> <p>8 MS. LEWIS: Objection, form.</p> <p>9 A. I don't --</p> <p>10 Go through that again. I don't know that</p> <p>11 I --</p> <p>12 Q. Do you agree --</p> <p>13 A. -- can answer that question.</p> <p>14 Q. Do you agree that preventable injuries to</p> <p>15 patients that are caused during medical care are a</p> <p>16 leading cause of death in the United States?</p> <p>17 A. I don't --</p> <p>18 MS. LEWIS: Objection, form.</p> <p>19 A. -- know the answer to that one.</p> <p>20 Q. You agree with me that doctors make</p> <p>21 mistakes?</p> <p>22 A. Occasionally, yes.</p> <p>23 Q. Nurses make mistakes?</p> <p>24 A. Yes.</p> <p>25 Q. Engineers can make mistakes?</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Okay. Is that -- Is that a guess?</p> <p>2 A. Yes. Might be 60 minutes.</p> <p>3 Q. Okay.</p> <p>4 A. Yes, it's a guess.</p> <p>5 Q. Okay. I don't want you to guess today.</p> <p>6 A. Okay. All right. Then it's an "I don't</p> <p>7 know."</p> <p>8 Q. Okay.</p> <p>9 A. I'll leave it at that.</p> <p>10 Q. And your counsel doesn't want you to guess.</p> <p>11 A. I'll leave it at "I don't know."</p> <p>12 Q. Okay. Have you taught the SCIP protocols in</p> <p>13 your -- any of your classes?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you know what the difference</p> <p>16 between pre-warming and perioperative warming is?</p> <p>17 A. Pre-warming is exactly what it says, it's</p> <p>18 done in the pre-op holding area, wherever that is in</p> <p>19 the facility, and intraop -- peri is -- to me, I would</p> <p>20 be intraop warming.</p> <p>21 Q. Okay. Do you know --</p> <p>22 Are you aware of any studies with respect to</p> <p>23 the effects of pre-warming as compared to</p> <p>24 perioperative warming?</p> <p>25 A. Say the question again.</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Yes.</p> <p>2 Q. I mean, bridges fall; correct?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Buildings collapse?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. With respect to the SCIP protocol</p> <p>7 with -- with maintaining normothermia, what are your</p> <p>8 -- what's your understanding of the requirements, like</p> <p>9 when to use patient warming?</p> <p>10 A. The requirement is that the patient's</p> <p>11 temperature is taken 30 minutes before the procedure,</p> <p>12 monitored during, and 15 minutes post procedure. So</p> <p>13 the care practitioners are instructed to maintain that</p> <p>14 normothermia as best as possible.</p> <p>15 Q. Does it talk about, like, what are the</p> <p>16 criteria to actually use the patient-warming device,</p> <p>17 --</p> <p>18 A. No.</p> <p>19 Q. -- like length of surgery?</p> <p>20 A. No. No criteria. Suggestions, but not</p> <p>21 criteria.</p> <p>22 Q. Okay. Any suggestions as to what length of</p> <p>23 surgery you should use patient warming?</p> <p>24 A. I think the criteria is that any procedure</p> <p>25 over 30 minutes.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. Do you --</p> <p>2 Are you aware of any studies that compare</p> <p>3 pre-warming only as compared to perioperative warming?</p> <p>4 A. I am not aware of any, no.</p> <p>5 Q. Okay. And with respect to the issues of</p> <p>6 warming patients and maintaining normothermia, you</p> <p>7 agree with me that'd be more of -- in the purview of</p> <p>8 an anesthesiologist that is responsible for those</p> <p>9 issues as compared to a nurse; correct?</p> <p>10 A. No. It's usually a collaborative effort.</p> <p>11 Q. Okay. So what nurse are you aware of that's</p> <p>12 actually done clinical studies on -- on maintaining</p> <p>13 normothermia?</p> <p>14 A. None that I know of.</p> <p>15 Q. Okay. It's usually done by</p> <p>16 anesthesiologists; correct?</p> <p>17 A. Correct.</p> <p>18 Q. They're the experts with respect to</p> <p>19 hypothermia and maintaining normothermia; correct?</p> <p>20 A. I believe they have done more studies, yes.</p> <p>21 Q. Okay. Well are you aware of any nurse</p> <p>22 that's done a study?</p> <p>23 A. Not studies, no.</p> <p>24 Q. Okay. I mean, any literature that was</p> <p>25 created by a nurse was basically review of what the</p>

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<p style="text-align: right;">Page 58</p> <p>1 literature is done by medical doctors; correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Because a nurse is not an expert in</p> <p>4 hypothermia; correct?</p> <p>5 A. A nurse can conduct research.</p> <p>6 Q. Okay. But are you aware of any nurse --</p> <p>7 You're not an expert -- Strike that.</p> <p>8 You've done no research on hypothermia;</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. You've done no research on maintaining</p> <p>12 normothermia; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And sitting here today, are you aware</p> <p>15 of any research with respect to using -- the effects</p> <p>16 of hypothermia on total hip or total knee</p> <p>17 arthroplasty?</p> <p>18 A. That there --</p> <p>19 The question is whether or not --</p> <p>20 Q. Are you aware of any research?</p> <p>21 A. -- aware of any research on --</p> <p>22 MS. LEWIS: Let him ask the question.</p> <p>23 Q. Let me ask it again.</p> <p>24 A. Okay.</p> <p>25 Q. Are you aware of any research, sitting here</p>	<p style="text-align: right;">Page 60</p> <p>1 MS. LEWIS: But that was a different</p> <p>2 question, but --</p> <p>3 A. It was, but no.</p> <p>4 MS. LEWIS: Can we take a break?</p> <p>5 MR. ASSAAD: Five minutes.</p> <p>6 Q. Do you need a break?</p> <p>7 A. I would love a break.</p> <p>8 Q. Sure.</p> <p>9 MR. ASSAAD: Let's take a break.</p> <p>10 A. I would love to go to the restroom.</p> <p>11 THE REPORTER: Off the record, please.</p> <p>12 (Recess taken from 11:07 to 11:13 a.m.)</p> <p>13 BY MR. ASSAAD:</p> <p>14 Q. Are you ready to continue?</p> <p>15 A. Yes. Thank you.</p> <p>16 Q. Are you a member of AORN?</p> <p>17 A. Yes.</p> <p>18 Q. How long have you been a member?</p> <p>19 A. Since 1980.</p> <p>20 Q. What was your understanding of the issues</p> <p>21 you were to address with respect to this case?</p> <p>22 A. To describe the environment for the surgical</p> <p>23 patient, and how -- part of how the Bair Hugger</p> <p>24 blanket is completely separate, away from the surgical</p> <p>25 site and the procedure.</p>
<p style="text-align: right;">Page 59</p> <p>1 today, that looked at the effects of hypothermia on</p> <p>2 total knee and total hip arthroplasty?</p> <p>3 A. Yes.</p> <p>4 Q. What?</p> <p>5 A. I can't name it, but yes, I under -- I</p> <p>6 believe, in my recall of reading, there is some</p> <p>7 literature, yes.</p> <p>8 Q. About what? What -- Like, about infections?</p> <p>9 A. Increased coagulation time, increased</p> <p>10 cardiac ischemia or risk for, and increased potential</p> <p>11 risk for SSI.</p> <p>12 Q. Increased potential risk for SSI?</p> <p>13 A. Correct.</p> <p>14 Q. Are you sure about that, or are you</p> <p>15 guessing?</p> <p>16 A. I can't cite the article, so.</p> <p>17 Q. My question is: Do you specifically,</p> <p>18 sitting here today, recall an article that states that</p> <p>19 maintaining normothermia for a total hip or total knee</p> <p>20 arthroplasty reduces the incident of surgical-site</p> <p>21 infections?</p> <p>22 A. No.</p> <p>23 Q. Okay.</p> <p>24 A. I'll say no.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. What is your understanding of the</p> <p>2 plaintiffs' claims in this case?</p> <p>3 A. That the device is somehow sucking up what</p> <p>4 is their version of dirty air and circulating it to</p> <p>5 the surgical site.</p> <p>6 Q. Okay. Do you have any understanding of the</p> <p>7 mechanism in which the plaintiffs allege that the,</p> <p>8 quote unquote, dirty air gets to the surgical site?</p> <p>9 A. No.</p> <p>10 Q. You do agree with me that the air underneath</p> <p>11 the operating room table is considered, quote unquote,</p> <p>12 dirty air.</p> <p>13 A. No.</p> <p>14 Q. You disagree?</p> <p>15 A. I disagree.</p> <p>16 Q. Okay. So you think the bacterial load</p> <p>17 underneath the operating room table is equivalent to</p> <p>18 the air above the operating room table?</p> <p>19 A. Yes.</p> <p>20 Q. And why do you think that?</p> <p>21 A. From my own knowledge, not as an engineer,</p> <p>22 but knowledge of understanding the air current and</p> <p>23 flows in the operating room and the forcefulness of</p> <p>24 the flow down over the patient.</p> <p>25 Q. Okay. So you have air that's coming in from</p>

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<p style="text-align: right;">Page 62</p> <p>1 the ventilation from above the patient; correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And you believe that the air that's</p> <p>4 coming down from the ventilation system, its bacterial</p> <p>5 load is the same as the air that's underneath the</p> <p>6 operating room table.</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Do you know what a skin squame is?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Do people shed skin squames in the</p> <p>11 operating room?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know roughly how many skin squames</p> <p>14 are shed during a one-hour period?</p> <p>15 A. No.</p> <p>16 Q. Would you be surprised that in between two</p> <p>17 and four hours, between one million and 900 million</p> <p>18 skin squames are shed?</p> <p>19 A. I would not be surprised, but I don't know</p> <p>20 the number.</p> <p>21 Q. Do you know whether or not skin squames have</p> <p>22 bacteria on them?</p> <p>23 MS. LEWIS: Objection, form.</p> <p>24 A. I don't know one way or the other.</p> <p>25 Q. Do you know what bacteria is?</p>	<p style="text-align: right;">Page 64</p> <p>1 A. It gets potentially dirty. It does not</p> <p>2 necessarily get dirty.</p> <p>3 Q. Okay. So your --</p> <p>4 So it's your testimony today that during an</p> <p>5 operation you can't say for certain whether or not the</p> <p>6 floor gets dirty or not.</p> <p>7 A. Depends on the procedure.</p> <p>8 Q. Say a total hip or total knee.</p> <p>9 A. Again depends on the procedure. If there's</p> <p>10 nothing that's spilled onto the floor, it's as clean</p> <p>11 as when it started the procedure.</p> <p>12 Q. What about all the skin squames that fall</p> <p>13 off people?</p> <p>14 A. I can't answer whether they and -- they land</p> <p>15 on the floor or not.</p> <p>16 Q. Where do you think they go?</p> <p>17 A. I can't answer that.</p> <p>18 Q. You don't know? Okay.</p> <p>19 A. No.</p> <p>20 Q. What about bone fragments that -- when --</p> <p>21 when the surgeon cuts the bone in a total hip or total</p> <p>22 knee, do you know where those fragments go?</p> <p>23 A. No.</p> <p>24 Q. Okay. Do you know whether or not you teach</p> <p>25 your nurses to keep their hands above the operating</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Do you know whether or not people</p> <p>3 have bacteria on their skin?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And do you know what percentage of</p> <p>6 bacteria are contained on the skin compared to the</p> <p>7 amount of skin cells someone has?</p> <p>8 A. No.</p> <p>9 Q. When the skin squames shed off a -- a</p> <p>10 person, do you know whether or not they go up, down,</p> <p>11 left or right?</p> <p>12 A. I do not.</p> <p>13 Q. Okay. Do you believe the floor is clean in</p> <p>14 the operating room?</p> <p>15 A. Yes.</p> <p>16 Q. At all times?</p> <p>17 A. Yes.</p> <p>18 Q. So why is it cleaned?</p> <p>19 A. It's cleaned between patients to put --</p> <p>20 reduce any risk of contamination from one patient to</p> <p>21 the other, --</p> <p>22 Q. Okay. So at some point --</p> <p>23 A. -- as well as the rest of the room, not just</p> <p>24 the floor.</p> <p>25 Q. But at some point it gets dirty; correct?</p>	<p style="text-align: right;">Page 65</p> <p>1 room table as compared to letting them below the</p> <p>2 operating room table?</p> <p>3 A. Are you talking about those who are scrubbed</p> <p>4 at the surgical field?</p> <p>5 Q. Yes.</p> <p>6 A. They are instructed to keep them in front of</p> <p>7 them so that they can see them at all times.</p> <p>8 Q. Are they allowed to put them down below the</p> <p>9 operating room table?</p> <p>10 A. If it's a low --</p> <p>11 If it's a sitting case, yes, but otherwise</p> <p>12 not usually.</p> <p>13 Q. Okay. Say in a total hip or total knee, are</p> <p>14 they allowed to put their arms underneath the</p> <p>15 operating room table?</p> <p>16 A. Under the table?</p> <p>17 Q. Or below the operating room table?</p> <p>18 A. It's not below the table, it's below where</p> <p>19 the -- where they are in relation to the table, so</p> <p>20 they don't want to be below the table.</p> <p>21 Q. Why not?</p> <p>22 A. Because, again, they may inadvertently touch</p> <p>23 something that was not sterile like they were.</p> <p>24 Q. Okay. But what if they don't touch</p> <p>25 anything, is it still okay to put your hands</p>

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<p style="text-align: right;">Page 66</p> <p>1 underneath the operating room table?</p> <p>2 A. The recommendation is to keep them in front</p> <p>3 of you at all times.</p> <p>4 Q. Why is that the recommendation?</p> <p>5 A. So, again, you are not inadvertently</p> <p>6 contaminating yourself.</p> <p>7 Q. So sitting here today you have no opinion as</p> <p>8 to whether -- Strike that. Strike that.</p> <p>9 You do understand that the airflow in the</p> <p>10 operating room is pushing all the contaminants down to</p> <p>11 the floor and then out of -- out to the output vents</p> <p>12 in the operating room.</p> <p>13 A. I don't know if --</p> <p>14 MS. LEWIS: Objection, form.</p> <p>15 A. -- it's pushing contaminants. I know the</p> <p>16 direction of the flow. I can't answer whether or not</p> <p>17 it's pushing anything besides the flow.</p> <p>18 Q. You write on page 2, under introduction to</p> <p>19 operating room environment, last sentence: "Although</p> <p>20 the unidirectional air is filtered, it is not</p> <p>21 considered sterile, and is not sterile over the</p> <p>22 operating room bed."</p> <p>23 What is your basis behind that? What are</p> <p>24 you -- What citation are you referring to in your</p> <p>25 citations to support that statement?</p>	<p style="text-align: right;">Page 68</p> <p>1 from that: "The air is filtered and the</p> <p>2 unidirectional downward air flow is strong."</p> <p>3 What do you mean by the term "strong"?</p> <p>4 A. That means when you're standing next to the</p> <p>5 patient at the surgical site you can feel the airflow</p> <p>6 on the back of your neck.</p> <p>7 Q. Okay. So that to you is "strong."</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 A. That's my words and my description.</p> <p>11 Q. And I take it if I ask you what the velocity</p> <p>12 of the air, you would not know what the answer is;</p> <p>13 correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. Are you --</p> <p>16 When you participate in a total hip or total</p> <p>17 knee are you the scrub nurse?</p> <p>18 A. I can function as either the scrub nurse or</p> <p>19 the circulating nurse.</p> <p>20 Q. Okay. Does the Bair Hugger work, in your</p> <p>21 opinion?</p> <p>22 A. Yes. It keeps the patient at a good</p> <p>23 normothermia temperature.</p> <p>24 Q. So you think the Bair Hugger is effective in</p> <p>25 the first hour of surgery?</p>
<p style="text-align: right;">Page 67</p> <p>1 A. I don't know that I can answer with a</p> <p>2 citation.</p> <p>3 Q. Okay.</p> <p>4 A. The air in the room is not sterile. I can</p> <p>5 honestly say that. It is not sterile.</p> <p>6 Q. And what's your basis?</p> <p>7 A. My basis of microbiology and sterilization</p> <p>8 properties.</p> <p>9 Q. What class or what lecture have you taken in</p> <p>10 the microbiology -- with respect to microbiology that</p> <p>11 discusses the unidirectional airflow in an op --</p> <p>12 A. Nothing.</p> <p>13 Q. Okay.</p> <p>14 A. Nothing.</p> <p>15 Q. What citation are you referring to that</p> <p>16 could support that statement, sitting here today?</p> <p>17 A. Probably a basic course on sterilization.</p> <p>18 Q. Well I'm asking about a citation, like a --</p> <p>19 A. I cannot spit out a citation for you today.</p> <p>20 Q. Okay. Do you know whether or not the air is</p> <p>21 filtered coming out of the ventilation?</p> <p>22 A. I'm not an engineer, but I understand it is.</p> <p>23 Q. Do you know what level filtration?</p> <p>24 A. I do not.</p> <p>25 Q. You write down, like four, five lines up</p>	<p style="text-align: right;">Page 69</p> <p>1 A. I can't answer on the hour. I can answer on</p> <p>2 whether or not it keeps the patient at normothermia.</p> <p>3 Q. Okay. Have you --</p> <p>4 So it's your opinion today that if you use</p> <p>5 the Bair Hugger that it keeps the -- it keeps the</p> <p>6 patient normothermic.</p> <p>7 A. It gets to the normothermic goal, yes.</p> <p>8 Q. And what's the normothermic goal?</p> <p>9 A. Remember we were going to take their</p> <p>10 patient -- their temperature 30 minutes before and 15</p> <p>11 minutes after, and we want them to be in a normal</p> <p>12 range during that period of time.</p> <p>13 Q. What is considered hypothermic?</p> <p>14 A. Below -- Below 98.6.</p> <p>15 Q. So that would be about --</p> <p>16 A. Thirty --</p> <p>17 Q. -- 37 degrees?</p> <p>18 A. Yeah. Thirty --</p> <p>19 Yes.</p> <p>20 Q. So it's your --</p> <p>21 A. And there are -- there are some parameters,</p> <p>22 you'd have to look again at the anesthesia guidelines</p> <p>23 for the parameters. There are parameters for</p> <p>24 normothermia.</p> <p>25 Q. So 98.6 degrees is 37 degrees Celsius.</p>



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<p>1 A. Okay.</p> <p>2 Q. So is it your opinion that a patient's</p> <p>3 hypothermic if they're below 37 degrees?</p> <p>4 A. If they were at 98.6 before their procedure</p> <p>5 started.</p> <p>6 Q. Have you ever touched a Bair Hugger blanket</p> <p>7 in use?</p> <p>8 A. Touched it?</p> <p>9 Q. Yeah.</p> <p>10 A. Yes.</p> <p>11 Q. Do you feel it being warm?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Can you feel it being warm, like</p> <p>14 standing around it?</p> <p>15 A. Not unless you're touching it, no.</p> <p>16 Q. Okay. Can you feel air coming out of the</p> <p>17 Bair Hugger when you're next to it?</p> <p>18 A. Only if you're at the head with -- next to</p> <p>19 anesthesia.</p> <p>20 Q. Okay. How much air do you feel coming out</p> <p>21 of it, a lot or a little?</p> <p>22 A. A little.</p> <p>23 Q. Okay. Like, would the air current be</p> <p>24 stronger than the unidirectional flow, or much weaker</p> <p>25 than the unidirectional flow?</p>	<p>1 you -- like, you put the forced-air warmer on high or</p> <p>2 medium or low or?</p> <p>3 A. I don't, no.</p> <p>4 Q. You don't know what anesthesiologists do?</p> <p>5 A. No.</p> <p>6 Q. Okay. Do you yourself monitor the</p> <p>7 temperature of the patient when you're in the</p> <p>8 operating room?</p> <p>9 A. No.</p> <p>10 Q. Do you agree with me that heat rises?</p> <p>11 A. Yes.</p> <p>12 Q. That's why hot air balloons go up. You</p> <p>13 understand that; correct?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Okay. You agree with me that a -- a</p> <p>16 periprosthetic joint infection is a very serious</p> <p>17 infection; correct?</p> <p>18 A. I'm not sure I understand the term</p> <p>19 periprosthes -- I've never heard that term before.</p> <p>20 Q. You never heard of a -- the term</p> <p>21 "periprosthetic joint infection"?</p> <p>22 A. No.</p> <p>23 Q. Okay. Sitting here today, do you know the</p> <p>24 --</p> <p>25 So sitting here today you would not know the</p>
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<p>1 A. Much weaker.</p> <p>2 Q. Okay. So when you say you feel it, you just</p> <p>3 feel, like, some warm air.</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And that's when you're standing at</p> <p>6 the head of the patient?</p> <p>7 A. Correct.</p> <p>8 Q. In a total hip and total knee arthroplasty?</p> <p>9 A. Correct.</p> <p>10 Q. Do you know the different settings on a Bair</p> <p>11 Hugger?</p> <p>12 A. Yeah, but I can't recite what they are. I</p> <p>13 believe there are different settings. I think one is</p> <p>14 -- I shouldn't guess. One is ambient and one is warm,</p> <p>15 but I don't know the temperature settings for either.</p> <p>16 Q. Well ambient would be room temperature;</p> <p>17 correct?</p> <p>18 A. Room air, correct.</p> <p>19 But I can't tell you what it -- there is a</p> <p>20 number on it, and I don't know what that is.</p> <p>21 Q. Okay. Have you -- Have --</p> <p>22 Do you know whether or not there's different</p> <p>23 fan speeds?</p> <p>24 A. I do not know that.</p> <p>25 Q. Do you know whether or not you put the --</p>	<p>1 difference between a periprosthetic joint infection</p> <p>2 and a superficial wound infection; correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And if I asked you the amount of --</p> <p>5 Do you know what a CFU is?</p> <p>6 A. I've forgotten.</p> <p>7 Q. Okay. So sitting here today, you don't know</p> <p>8 what a CFU is; correct?</p> <p>9 A. No.</p> <p>10 Q. Okay. So sitting here today, you would not</p> <p>11 know the mechanism of causing an infection with</p> <p>12 respect to a periprosthetic joint infection; correct?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. You agree with me that you want to</p> <p>15 keep the operating room as sterile as possible;</p> <p>16 correct?</p> <p>17 A. The operating room is not sterile.</p> <p>18 Q. Let me rephrase that.</p> <p>19 You want to keep the area -- the surgical</p> <p>20 site as sterile as possible.</p> <p>21 A. No. I would not agree with that statement.</p> <p>22 Q. Okay. Do you want to place measures to keep</p> <p>23 as much of the contaminants out of the surgical site?</p> <p>24 A. Yes.</p> <p>25 Q. And you also want to keep -- you want to</p>



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<p style="text-align: right;">Page 74</p> <p>1 place measures that would keep contaminants out of the</p> <p>2 area in which the surgeon is working; correct?</p> <p>3 A. Yes.</p> <p>4 Q. Keep contaminants out of the area of the</p> <p>5 surgeon's hands or anyone's hands that are going to</p> <p>6 the surgical site; correct?</p> <p>7 A. Yes.</p> <p>8 Q. You want to keep contaminants out of the</p> <p>9 area where the surgical instruments are being placed.</p> <p>10 A. Yes.</p> <p>11 Q. You want to keep the --</p> <p>12 You want to place measures to keep the area</p> <p>13 where the implant is being placed before it's placed</p> <p>14 into the patient, to limit the contaminants that reach</p> <p>15 that area; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Because there's many ways that you</p> <p>18 could infect an implant; correct? Strike that.</p> <p>19 There's many ways an implant could be</p> <p>20 contaminated; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Could be by direct contamination if the</p> <p>23 surgeon's hands are not sterile; correct?</p> <p>24 A. His hands --</p> <p>25 Q. Where his gloves are, they're not sterile.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. Okay. But it's your opinion that a sterile</p> <p>2 field is not sterile.</p> <p>3 A. It is as sterile as it can be.</p> <p>4 Q. Okay. And there's many procedures and rules</p> <p>5 and regulations in the operating room to keep the</p> <p>6 sterile field as sterile as possible.</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And not just the --</p> <p>9 And the sterile field includes the surgical</p> <p>10 site?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. It includes the front of the surgeons</p> <p>13 and the assistants participating in the surgery?</p> <p>14 A. Yes.</p> <p>15 Q. It includes the back tables?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. It includes anything that may</p> <p>18 contaminate the surgical site; correct?</p> <p>19 A. Any inanimate object, is that what you're?</p> <p>20 Q. Yes.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And in fact you do -- there is the</p> <p>23 patient prep where you try to make the skin around the</p> <p>24 patient where the surgical site is as sterile as</p> <p>25 possible, as clean as possible.</p>
<p style="text-align: right;">Page 75</p> <p>1 A. I don't get that question. I'm sorry. I'm</p> <p>2 not following that question.</p> <p>3 Q. You do understand to cause a infection you</p> <p>4 need bacteria; correct?</p> <p>5 A. Correct.</p> <p>6 Q. And bacteria needs to be transferred to --</p> <p>7 for example, if it's an implant infection, onto the</p> <p>8 implant; correct?</p> <p>9 A. Potentially, yes. Correct.</p> <p>10 Q. Okay. And you want to place measures to</p> <p>11 limit the chances of any bacteria getting onto that</p> <p>12 implant.</p> <p>13 A. Correct.</p> <p>14 Q. Okay. That means you want to place measures</p> <p>15 to limit the amount of contaminants that could get</p> <p>16 onto the surgical gloves of the surgeon; correct?</p> <p>17 A. What do you mean by "place measures"?</p> <p>18 Q. Like, you want to -- you want to keep the</p> <p>19 area as clean as possible.</p> <p>20 A. Sterile.</p> <p>21 Q. Sterile.</p> <p>22 A. So ask the question again.</p> <p>23 Q. Have you heard of the term "a sterile</p> <p>24 field"?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Clean.</p> <p>2 Q. Okay.</p> <p>3 A. The skin --</p> <p>4 We do not sterilize the skin.</p> <p>5 Q. But you have sterile drapes; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And you isolate the surgical site and you</p> <p>8 put the sterile drapes around it; correct?</p> <p>9 (Interruption by the reporter.)</p> <p>10 THE REPORTER: "And you isolate the"?</p> <p>11 Q. -- sterile site, and you try to keep the --</p> <p>12 you try to limit the amount of contaminants that could</p> <p>13 get to that area; correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. For example, you put, like, even for</p> <p>16 the overhead lights you put, you know, a covering over</p> <p>17 the handles so it doesn't potentially contaminate the</p> <p>18 sterile field.</p> <p>19 A. No.</p> <p>20 Q. You don't put, like --</p> <p>21 A. The cover is used for the surgeon to</p> <p>22 manipulate the light, not to cover or sterilize the</p> <p>23 light.</p> <p>24 Q. Yeah, because you don't want the surgeon to</p> <p>25 touch the light that could be contaminated; correct?</p>

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<p>1 A. Correct. Yes. Touch an un --</p> <p>2 Q. The handle.</p> <p>3 A. -- the handle that's unsterile, yes.</p> <p>4 Q. Okay.</p> <p>5 A. The light is not covered, though.</p> <p>6 Q. I understand that.</p> <p>7 A. Okay.</p> <p>8 Q. But the light is cleaned; correct?</p> <p>9 A. Yes, it is cleaned.</p> <p>10 Q. And in fact on page 2, under "Introduction</p> <p>11 to the Operating Room Environment" of Exhibit 1 you</p> <p>12 write: "The operating room environment is one of</p> <p>13 rigid rules and regulations put in... place to protect</p> <p>14 the surgical patient and the healthcare worker";</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. There are many rules and regulations</p> <p>18 to protect a surgical patient; correct?</p> <p>19 A. Correct.</p> <p>20 Q. And that one of the reasons to protect the</p> <p>21 surgical patient is to try to protect the patient from</p> <p>22 obtaining a surgical-site infection.</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And you agree with me that there are</p> <p>25 certain types of infections that occur while the</p>	<p>1 A. That's correct.</p> <p>2 Q. Okay. You go on and say: "The pressure is</p> <p>3 maintained as positive pressure to the surrounding</p> <p>4 rooms."</p> <p>5 A. Correct.</p> <p>6 Q. Do you know what the -- the difference in</p> <p>7 pressure is?</p> <p>8 A. The degree, or the --</p> <p>9 Q. Yeah.</p> <p>10 A. No.</p> <p>11 Q. Okay. Do you agree that, on the first line</p> <p>12 of -- under "The Operating Room Procedures," that:</p> <p>13 "The goal is to provide for each surgical patient a</p> <p>14 safe clean environment"; correct?</p> <p>15 A. Yes.</p> <p>16 Q. So you want to do everything possible to</p> <p>17 have a clean, safe environment for the patient;</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. You don't want any device in there that</p> <p>21 could possibly cause harm to the patient; correct?</p> <p>22 A. Correct.</p> <p>23 Q. And if that device causes harm it should not</p> <p>24 be used in the patient unless it's absolutely</p> <p>25 necessary; correct?</p>
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<p>1 patient is in surgery.</p> <p>2 MS. LEWIS: Objection, form.</p> <p>3 A. I don't know that. I don't know that.</p> <p>4 Q. Okay. You don't know that. Okay.</p> <p>5 A. No.</p> <p>6 Q. You write down here: "The air handling</p> <p>7 requirement for an operating room is a minimum of 20</p> <p>8 exchanges an hour, with a minimum of 4 air changes of</p> <p>9 outdoor air."</p> <p>10 A. Correct.</p> <p>11 Q. Where'd you obtain that information?</p> <p>12 A. From the AORN recommended practice.</p> <p>13 Q. Is that cited?</p> <p>14 A. I believe it is, the 2017. (Witness</p> <p>15 reviewing exhibit.)</p> <p>16 No, I didn't put it in there.</p> <p>17 Q. Okay.</p> <p>18 A. Sorry.</p> <p>19 Q. So there's no reference --</p> <p>20 A. For garments --</p> <p>21 Yes, I'm sorry, I did. AORN Guideline for</p> <p>22 Safe Environment of Care. Part II is the one with</p> <p>23 air-handling recommendations.</p> <p>24 Q. Okay. But you yourself don't consider</p> <p>25 you're an expert in air handling; correct?</p>	<p>1 A. Correct.</p> <p>2 Q. And if there are other products that could</p> <p>3 do the same thing but are safer for the patient, then</p> <p>4 you should use that product; correct?</p> <p>5 MS. LEWIS: Objection to form.</p> <p>6 A. Say -- State that one again, I'm...</p> <p>7 Q. Well if there are -- if there are many ways</p> <p>8 to warm a patient, and one is safer than the other,</p> <p>9 you should use the one that's safer for the patient,</p> <p>10 correct, if they're both as effective?</p> <p>11 A. I don't --</p> <p>12 MS. LEWIS: Objection to form.</p> <p>13 A. -- know the answer to that.</p> <p>14 Q. You don't?</p> <p>15 A. No. I've only used one device, so I don't</p> <p>16 know if there are others that are as effective.</p> <p>17 Q. Well hypothetically --</p> <p>18 A. You're asking my opinion. That's my</p> <p>19 opinion. I don't know.</p> <p>20 Q. Hypothetically, if there is a device that is</p> <p>21 safer for the patient and it's just as effective as</p> <p>22 the Bair Hugger, would you agree with me, as an</p> <p>23 advocate for the patient, that you should use the</p> <p>24 safer device?</p> <p>25 MS. LEWIS: Objection to form.</p>

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<p style="text-align: right;">Page 82</p> <p>1 A. I can't answer that.</p> <p>2 Q. You can't answer that question?</p> <p>3 A. I can't answer that.</p> <p>4 Q. Why not?</p> <p>5 A. The answer would depend on the cost of the</p> <p>6 device, the studies that show it's as effective, and</p> <p>7 as ease of use. There are lots of factors other than</p> <p>8 just saying it's as effective.</p> <p>9 Q. So are you sitting here today that cost may</p> <p>10 be important than patient safety?</p> <p>11 A. Huge. Huge.</p> <p>12 Q. So you're saying it's more important than</p> <p>13 patient safety?</p> <p>14 A. No. I didn't say "more important."</p> <p>15 Q. Well that was my question, ma'am.</p> <p>16 A. It -- Say your question again.</p> <p>17 Q. Are you sitting here today saying that cost</p> <p>18 is more important than patient safety?</p> <p>19 A. No.</p> <p>20 Q. Okay. Are you saying that the ease of use</p> <p>21 of the device is more important than patient safety?</p> <p>22 A. No.</p> <p>23 Q. Okay. Patient safety is paramount; correct?</p> <p>24 A. Yes.</p> <p>25 Q. And you think the Bair Hugger is safe;</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Okay. So they didn't tell you that they</p> <p>2 referred you to Deborah Lewis.</p> <p>3 A. One colleague did, yes.</p> <p>4 Q. Okay.</p> <p>5 A. She sent me an email saying, I've tossed</p> <p>6 your name out there.</p> <p>7 Q. Okay.</p> <p>8 A. But did not have any particulars of the</p> <p>9 case.</p> <p>10 Q. Okay. And before you --</p> <p>11 Let me ask you this: Were there any facts</p> <p>12 that 3M provided, or their counsel, that you relied</p> <p>13 upon in formulating your opinions?</p> <p>14 A. No.</p> <p>15 Q. Okay. Did you do any independent research</p> <p>16 to determine whether or not the plaintiffs'</p> <p>17 allegations were true or false?</p> <p>18 A. No.</p> <p>19 Q. Okay. So my understanding is that you were</p> <p>20 asked to offer an expert opinion in this case</p> <p>21 regarding the safety of the Bair Hugger, and you</p> <p>22 yourself did not provide any inde -- perform any</p> <p>23 independent research.</p> <p>24 MS. LEWIS: Objection, form. That's not</p> <p>25 what --</p>
<p style="text-align: right;">Page 83</p> <p>1 correct?</p> <p>2 A. Yes, --</p> <p>3 Q. Okay.</p> <p>4 A. -- in my experience.</p> <p>5 Q. Okay. Did you do any research to see what</p> <p>6 has been written about the Bair Hugger and its safety</p> <p>7 in the past 10 years?</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 A. Other than to cite my articles.</p> <p>11 Q. Okay.</p> <p>12 A. That's the reading I've done.</p> <p>13 Q. So you were asked to be an expert in this</p> <p>14 case; correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And you got a call from some attorney</p> <p>17 at 3M, I guess it was in May of 2017; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. It was Deborah.</p> <p>21 Q. Okay. And before you were --</p> <p>22 Did you know you would be receiving a call,</p> <p>23 from your colleagues, regarding the Bair Hugger device</p> <p>24 and this litigation?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 85</p> <p>1 MR. ASSAAD: Basis?</p> <p>2 MS. LEWIS: That's not what's in her</p> <p>3 report.</p> <p>4 A. I was asked to testify as to the flow of the</p> <p>5 patient in the OR environment, not to conduct</p> <p>6 independent research.</p> <p>7 Q. You were asked to testify to what? I'm</p> <p>8 sorry.</p> <p>9 A. To the flow and -- of the patient in the</p> <p>10 operating room.</p> <p>11 Q. When you say "the flow of the patient,"</p> <p>12 what, the airflow?</p> <p>13 A. No, the flow, the -- the description of what</p> <p>14 happens to the patient in the operating room.</p> <p>15 Q. Okay. So sitting here today, you have done</p> <p>16 no research or looked at the issues in this case to</p> <p>17 determine, as a -- as a scientist, whether or not the</p> <p>18 Bair Hugger is safe.</p> <p>19 A. No, I would answer that, no, I have.</p> <p>20 Q. What research have you done?</p> <p>21 A. I have not done independent research, if</p> <p>22 that's what you're asking. No, I have not done any</p> <p>23 independent research. I have done reading.</p> <p>24 Q. Okay. What reading have you done besides</p> <p>25 what's in here?</p>

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<p>1 A. This is what I've read.</p> <p>2 Q. Okay. So you've read two articles on page</p> <p>3 7, items number 6 and 7, with respect to forced-air</p> <p>4 warming devices?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. So your -- sitting here today it is</p> <p>7 your -- it's my understanding that your basis for</p> <p>8 whether or not the Bair Hugger is safe is based on</p> <p>9 references numbers 6 and 7 to your report.</p> <p>10 A. And my --</p> <p>11 And my expertise as a nurse.</p> <p>12 Q. Well your expertise as a nurse did not</p> <p>13 involve any research with respect to the Bair Hugger</p> <p>14 safety; has it?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. So your expertise as a -- as a nurse</p> <p>17 has nothing to do with your opinion with respect to</p> <p>18 the safety of the Bair Hugger.</p> <p>19 A. I disagree.</p> <p>20 Q. Okay. What research have you done in the</p> <p>21 past --</p> <p>22 A. I have not done research.</p> <p>23 Q. Okay. What --</p> <p>24 What is it about being a nurse that you've</p> <p>25 done, and have done anything, to determine the Bair</p>	<p>1 Q. Have you looked at the McGovern study?</p> <p>2 A. No.</p> <p>3 Q. Have you looked at any of the Legg studies?</p> <p>4 A. Is it --</p> <p>5 Q. Legg, L-E-G-G.</p> <p>6 A. No.</p> <p>7 Q. Have you looked at any of --</p> <p>8 Have you looked at the Dasari study?</p> <p>9 A. No.</p> <p>10 Q. Have you looked at the Belani study?</p> <p>11 A. No.</p> <p>12 Q. Have you looked at the Harper study?</p> <p>13 A. No.</p> <p>14 Q. Have those studies been provided to you by</p> <p>15 the defendants in this case?</p> <p>16 A. I don't remember that they have. I do not</p> <p>17 -- No. No.</p> <p>18 Q. Because if they were listed it would be in</p> <p>19 your report; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. You stated that you -- that as an</p> <p>22 expert you were to be objective; correct?</p> <p>23 A. Correct.</p> <p>24 Q. Do you think it's being objective by not</p> <p>25 looking at the studies that the plaintiffs rely upon</p>
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<p>1 Hugger is safe?</p> <p>2 A. My practice is I'm very interested in making</p> <p>3 sure the patients are safe. If there was any</p> <p>4 literature, or recalls, or concerns that any device</p> <p>5 was not safe to be used on patients, I would not use</p> <p>6 it in my practice.</p> <p>7 MR. ASSAAD: Move to strike, nonresponsive.</p> <p>8 Q. What have you done?</p> <p>9 A. I have not done any independent research.</p> <p>10 Q. Okay. Have you done any biological testing?</p> <p>11 A. No.</p> <p>12 Q. Have you done any filtration testing?</p> <p>13 A. No.</p> <p>14 Q. Have you looked at particle counts in an</p> <p>15 operating room?</p> <p>16 A. No.</p> <p>17 Q. Okay. In fact you have not done any type of</p> <p>18 testing with respect to the Bair Hugger; correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. So again, besides your -- I mean, did</p> <p>21 you have any -- With re -- Strike that.</p> <p>22 With respect to determining, outside reading</p> <p>23 those two articles, that the Bair Hugger is safe, what</p> <p>24 methodology did you use?</p> <p>25 A. None.</p>	<p>1 to determine whether or not the Bair Hugger is safe?</p> <p>2 MS. LEWIS: Well again, counsel, objection</p> <p>3 to the form. Her expert report doesn't talk about an</p> <p>4 expert opinion on whether the Bair Hugger is safe or</p> <p>5 not. So, I mean, your question is unfair when that's</p> <p>6 not what she's got in her report. [Clearing throat.]</p> <p>7 Q. You may answer the question.</p> <p>8 MS. LEWIS: My same objection applies.</p> <p>9 THE WITNESS: Could you state the question</p> <p>10 again? I'm sorry.</p> <p>11 Q. Do you think it's being objective by not</p> <p>12 looking at the studies that the plaintiffs rely upon</p> <p>13 to determine whether or not the Bair Hugger is safe?</p> <p>14 A. Yes.</p> <p>15 Q. You think that's being objective?</p> <p>16 A. Yes.</p> <p>17 Q. So you think being objective is looking at</p> <p>18 one side of -- of an issue and not looking at the</p> <p>19 other side and see what science or literature or</p> <p>20 testing were done with respect to the Bair Hugger?</p> <p>21 A. Being objective is coming up with my own</p> <p>22 opinion, which is what I did.</p> <p>23 Q. Okay.</p> <p>24 A. Which is I provided my opinion.</p> <p>25 Q. So just so I understand at trial. You're</p>

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1 not going to come in at trial and offer the opinion  
2 that the Bair Hugger is safe; correct?

3 A. That's correct. I'm going to offer that  
4 it's efficient, and talk about the flow of the  
5 patient, not -- not airflow. Don't confuse my  
6 statement with patient processes in the operating  
7 room.

8 Q. Why do you say it's efficient?

9 A. It's efficient in maintaining normothermia.

10 Q. As compared to what?

11 A. That's it. It's efficient.

12 Q. Well wh --

13 A. I don't have a comparison.

14 Q. Well don't you agree to determine something  
15 is efficient that you should compare it to something?

16 A. In determining whether the patient  
17 maintained their temperature from pre-op to post-op,  
18 in monitoring the temperature the Bair Hugger is able  
19 to do that.

20 Q. Okay. But you're not aware of studies that  
21 indicate --

22 Well do you know who Dr. Sessler is?

23 A. No.

24 Q. Okay. Do you know who Dr. Kurz is?

25 A. No.

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1 Q. Okay. And you're not aware of any studies  
2 that discusses the effectiveness of the Bair Hugger in  
3 -- in the first hour of surgery; correct?

4 A. That's correct.

5 Q. Okay. So you'd be surprised if there's  
6 studies out there that say preoperative warming is  
7 more efficient to maintain normothermia in the first  
8 hour of an operation than perioperative warming.

9 A. Yes, I would be surprised.

10 Q. Okay. And do you know the term of -- that's  
11 used by anesthesiologists called the redistribution of  
12 heat?

13 A. No.

14 Q. Okay. Do you know what happens biologically  
15 when a patient goes under general anesthesia?

16 A. Generally.

17 Q. Okay. With respect to the heat of --

18 With respect to the body temperature?

19 A. There's --

20 Yes. There's vasodilatation which takes  
21 temperature away from the core, which decreases the  
22 patient's core temperature.

23 Q. And it redistributes it to the extremities;  
24 correct?

25 A. Correct.

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1 Q. Okay. Do you know what happens when a  
2 patient gets below 34.5 degrees?

3 A. I believe that's when they're at risk for a  
4 cardiac ischemia, clotting changes, yes.

5 Q. Okay. But so --

6 A. So there are some metabolic changes that  
7 happened in the body, yes.

8 Q. Are you aware that the seminal study that  
9 was performed by Dr. Kurz and Dr. Sessler with respect  
10 to the effects of -- or maintaining normothermia in  
11 infection rates was a study where they actually cooled  
12 patients down?

13 A. No, I'm not. I'm not.

14 Q. And that --

15 You agree with me that would be unethical  
16 today to cool patients down during surgery.

17 A. I can't answer that question.

18 Q. Okay. So just so I understand, you are  
19 claiming that the Bair Hugger is efficient, but  
20 sitting here today you have no idea what other  
21 products out there are for patient warming?

22 A. Correct.

23 Q. Okay. And when you're saying "efficient" --

24 Well I don't even know what you mean by  
25 saying "efficient." What do you mean by "efficient"?

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1 A. Efficient, again, in that in measuring  
2 pre-op temperature and post-op temperature it is able  
3 to maintain their normal body temperature --

4 Q. Okay.

5 A. -- or keep them at a normal body  
6 temperature.

7 Q. So basically you're saying that the Bair  
8 Hugger performs its job. You're not saying it's  
9 efficient at doing its job.

10 A. It's performed to what it --

11 It does what it --

12 Q. Okay.

13 A. -- says it will do, is maintain  
14 normothermic.

15 Q. Okay. And when you were called by defense  
16 counsel in this case you agreed to handle the case;  
17 correct?

18 A. Yes. After discussion, yes.

19 Q. Okay. Did you look at any literature or do  
20 any research before you decided to be a defense for  
21 the expert?

22 A. No.

23 Q. Do you know how much air is blown out of a  
24 Bair Hugger when it's in use?

25 A. No.



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<p style="text-align: right;">Page 94</p> <p>1 Q. Do you know what the temperature of the air 2 is that comes out of the blanket in the Bair Hugger? 3 A. No. 4 Q. On page 4, on the paragraph that begins, 5 "the anesthesia provider." 6 A. Yes. 7 Q. It says, the last sentence: "The air 8 directed through the Bair Hugger blanket to the 9 patient is a gentle or mild air flow." 10 Did I read that correctly? 11 A. Yes. 12 Q. What's your basis if you don't know what the 13 -- the speed of the air coming out? 14 A. That's just from my opinion in feeling it. 15 That's my opinion. 16 Q. Okay. So you have no scientific basis, it's 17 just your opinion. 18 A. Correct. 19 Q. Okay. 20 A. Correct. The same as with the "strong," the 21 adjective of "strong" with the overhead -- 22 Q. Okay. 23 A. -- air. 24 Q. So it's a very subjective opinion; correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Okay. And where is the Bair Hugger usually 2 placed in the operating room? 3 A. At the head of the bed. 4 Q. Okay. Well isn't the anesthesiologist 5 sitting at the head? 6 A. Yes. 7 Q. Okay. So -- 8 A. It's next to or adjacent to him or her. 9 Q. Underneath the bed? 10 A. No, not. Adjacent. And if it's a lower end 11 unit it's at the foot. 12 Q. I understand that. 13 But for a total hip or total knee where 14 you're using an upper body blanket. 15 A. Correct. 16 Q. Okay. 17 A. So it would be adjacent to the machine or 18 the cart, depending on how the -- anesthesia's 19 assembled their work area. 20 Q. When you say "the machine or the cart"? 21 A. Anesthesia machine or their cart -- 22 Q. Okay. 23 A. -- which they usually have for medications. 24 Q. Do you know how long the hose is of the Bair 25 Hugger blanket?</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. There's no methodology behind that opinion. 2 A. That's correct. 3 Q. Okay. You mention about five lines up: 4 "The Bair Hugger may be on an IV pole also used by 5 anesthesia, or on a rolling cart." 6 Did I read that correctly? 7 A. Yes. 8 Q. Have you ever seen the Bair Hugger just 9 sitting on the floor? 10 A. No. 11 Q. You've never seen that? 12 A. No. 13 Q. Okay. How often do you see it on a IV pole? 14 A. Depends on the facility -- 15 Q. Okay. 16 A. -- and how they want to -- 17 Q. How often? 18 A. I can't answer that. 19 Q. How often do you see it on an IV pole in a 20 total knee or total hip arthroplasty? 21 A. I can't answer that. I don't have a 22 correlation. 23 Q. What color is the rolling cart? 24 A. I believe it's the same color as the device, 25 blue.</p>	<p style="text-align: right;">Page 97</p> <p>1 A. No. I never measured it. 2 Q. Do you know how much heat is transferred to 3 the patient when the Bair Hugger blanket's being used? 4 A. No. 5 Q. You're not an expert in heat transfer; are 6 you? 7 A. Correct. 8 Q. Sitting here today, do you know what's more 9 effective, the Bair Hugger or warm blankets? 10 A. My understanding from research is that the 11 Bair Hugger is more effective. 12 Q. And your basis? 13 A. Knowledge the blankets -- 14 My personal knowledge the blankets cool and 15 lose their temperature and don't provide any warming 16 support to the patient. 17 Q. If you use warming blankets, do you know 18 what the drop in the patient would be as compared to a 19 Bair Hugger blanket? 20 A. You mean a cotton blanket? 21 Q. Yeah, a warm cot -- there are warming -- 22 You have warm blankets in the operating 23 room; correct? 24 A. Correct. 25 Q. You actually have a cabinet that heats up</p>



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<p style="text-align: right;">Page 98</p> <p>1 blankets; correct?</p> <p>2 A. Correct.</p> <p>3 Q. And you could place those to warm the</p> <p>4 patient; correct?</p> <p>5 A. Correct.</p> <p>6 Q. If you use those blankets as compared to --</p> <p>7 like a cotton blanket as compared to a Bair Hugger</p> <p>8 blanket, do you know the difference in temperature</p> <p>9 that will result by using a warm cotton blanket as</p> <p>10 compared to a Bair Hugger blanket?</p> <p>11 A. No.</p> <p>12 Q. And you agree with me that time would be a</p> <p>13 factor with respect to the temperature drop; correct?</p> <p>14 A. I don't know that for a fact.</p> <p>15 Q. Okay. You talked before about, regard to</p> <p>16 the certified operating room nurse, you talked about</p> <p>17 budgets as part of -- part of the curriculum?</p> <p>18 A. Absolutely.</p> <p>19 Q. What do you mean by "budgets"?</p> <p>20 A. Materials management, staffing, staffing</p> <p>21 budgets, how to do a staffing budget.</p> <p>22 Q. Okay. You're aware that hospitals make a</p> <p>23 profit off the Bair Hugger blanket.</p> <p>24 A. Not necessarily.</p> <p>25 Q. Do you know one way or the other?</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Please describe Exhibit 4 for the record.</p> <p>2 A. The initial consultation with Deborah Lewis</p> <p>3 was on May 15th. May 22nd and May 25th of the same</p> <p>4 month I spent time preparing the document, with</p> <p>5 revisions to clarify my statements.</p> <p>6 Q. Okay. Your initial conversation was on May</p> <p>7 19th, not 15th; correct?</p> <p>8 A. I'm sorry. Yes, May 19th.</p> <p>9 Q. Okay. So you were contacted by Ms. Lewis on</p> <p>10 May 19th, 2017; correct?</p> <p>11 A. No. I think I was contacted the week --</p> <p>12 earlier that week by telephone, and then we had a</p> <p>13 consultation on the 19th.</p> <p>14 Q. Okay. Was anything substantively talked on</p> <p>15 the week before?</p> <p>16 A. No.</p> <p>17 MS. LEWIS: Counsel, we're not getting into</p> <p>18 the substance of conversations.</p> <p>19 MR. ASSAAD: Well I just want to know if it</p> <p>20 was -- I just want to know what she did, and I'm</p> <p>21 trying to figure out was it just like, hey, let's sit</p> <p>22 and talk, and I only want to know, like, if that was</p> <p>23 the conversation or you actually had another initial</p> <p>24 consultation.</p> <p>25 A. Oh, no, no, no, no.</p>
<p style="text-align: right;">Page 99</p> <p>1 A. I would say no.</p> <p>2 Q. So they don't charge the patient for the</p> <p>3 Bair Hugger blanket?</p> <p>4 A. My answer will be depend on what state you</p> <p>5 wor -- live in and work in, and what insurance you</p> <p>6 have. So I don't know the fact that the pati -- that</p> <p>7 the patient, number one, is billed, or, number two,</p> <p>8 that the hospital makes money.</p> <p>9 Q. Okay. So you don't know one way or the</p> <p>10 other, sitting here today.</p> <p>11 A. Correct.</p> <p>12 Q. Okay.</p> <p>13 MR. ASSAAD: We'll probably go, like,</p> <p>14 another fifteen minutes then we'll take a lunch</p> <p>15 break. Is that okay?</p> <p>16 MS. LEWIS: You'll go another how long?</p> <p>17 MR. ASSAAD: Fifteen minutes, and we'll do</p> <p>18 a lunch break.</p> <p>19 MS. LEWIS: Will you need a lunch break?</p> <p>20 MR. ASSAAD: Yeah.</p> <p>21 MS. LEWIS: Okay.</p> <p>22 (Discussion off the stenographic record.)</p> <p>23 (Hughes Exhibit 4 marked for</p> <p>24 identification.)</p> <p>25 BY MR. ASSAAD:</p>	<p style="text-align: right;">Page 101</p> <p>1 MS. LEWIS: Whoa, whoa, whoa, whoa. Whoa.</p> <p>2 THE WITNESS: I'm sorry.</p> <p>3 MS. LEWIS: Conversations with defense</p> <p>4 counsel are protected. We're not going into that.</p> <p>5 MR. ASSAAD: I'm allowed to go into the</p> <p>6 times and when, not to substance.</p> <p>7 MS. LEWIS: Well we're not going into</p> <p>8 substance.</p> <p>9 MR. ASSAAD: Okay.</p> <p>10 MS. LEWIS: You've asked about the time.</p> <p>11 MR. ASSAAD: I said I'm not going to go</p> <p>12 into substance, Ms. Lewis. That's what I said.</p> <p>13 BY MR. ASSAAD:</p> <p>14 Q. So you had an initial consultation on May</p> <p>15 19th, 2017 for one hour; correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And then on May 22nd, 2017 you had</p> <p>18 "preparation of document"; correct?</p> <p>19 A. Correct.</p> <p>20 Q. And that would be Exhibit 1 in this case;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And how much did you complete of the report</p> <p>24 on that day --</p> <p>25 A. Probably --</p>

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<p style="text-align: right;">Page 102</p> <p>1 Q. -- in those two hours?</p> <p>2 A. -- two thirds.</p> <p>3 Q. Two thirds. Okay.</p> <p>4 And then between May 22nd, 2017 and May 25,</p> <p>5 2017 I see that you didn't charge for any type of</p> <p>6 telephone calls or emails or -- or communications with</p> <p>7 defendants; right?</p> <p>8 A. That's correct.</p> <p>9 Q. Okay. Did you have any communications with</p> <p>10 defendants during that time?</p> <p>11 A. No. It was a holiday weekend.</p> <p>12 Q. Okay. Then you had "revision of document"</p> <p>13 for three hours; correct?</p> <p>14 A. Correct.</p> <p>15 Q. Is that when you finalized your doc -- your</p> <p>16 report?</p> <p>17 A. Yes.</p> <p>18 Q. So my understanding is it took you two hours</p> <p>19 to do two thirds of the report, and then three hours</p> <p>20 to finish the report; correct?</p> <p>21 A. Correct.</p> <p>22 Q. That's a total of five hours for the report.</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And you charged \$225 an hour;</p> <p>25 correct?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Okay. So did you not have full copy of</p> <p>2 those articles before you wrote your report?</p> <p>3 A. I had online copies only.</p> <p>4 Q. So why didn't you just print them from</p> <p>5 online?</p> <p>6 A. It was not that kind of a subscription. I</p> <p>7 needed to purchase to be able to print.</p> <p>8 Q. What type of subscription did you have to</p> <p>9 get to those articles?</p> <p>10 A. One was Springer, the other I don't</p> <p>11 remember. Elsevier maybe. I'm not -- I -- I'll say</p> <p>12 Springer, and I don't know the other one.</p> <p>13 Q. So is it your testimony today that these</p> <p>14 sites where you purchased these articles, that you</p> <p>15 could look at them, the entire article, but not print</p> <p>16 them up?</p> <p>17 A. Correct. That's my recollection.</p> <p>18 Q. Recollection?</p> <p>19 A. Yes. That's how I remember why I needed to</p> <p>20 purchase.</p> <p>21 Q. You --</p> <p>22 A. To print -- To print it popped up you must</p> <p>23 purchase.</p> <p>24 Q. Do you have the receipts for those articles?</p> <p>25 A. No, not with me.</p>
<p style="text-align: right;">Page 103</p> <p>1 A. Yes.</p> <p>2 Q. Okay. How'd you come up with that rate?</p> <p>3 A. That's the rate I have used previously in</p> <p>4 deposition -- or deposition and support.</p> <p>5 Q. Okay. On June 9th, 2017 you have "purchase</p> <p>6 of articles."</p> <p>7 A. Correct.</p> <p>8 Q. What articles did you purchase?</p> <p>9 A. All of the articles for my report. I wanted</p> <p>10 a hard copy of them.</p> <p>11 Q. Okay. So what -- So what did you have</p> <p>12 before?</p> <p>13 A. An online. I was reading them online.</p> <p>14 Q. Is the \$110 the cost to purchase the</p> <p>15 articles?</p> <p>16 A. Yes.</p> <p>17 Q. So it wasn't for your time, it was just to</p> <p>18 buy them.</p> <p>19 A. Correct.</p> <p>20 Q. Okay. What articles did you purchase on</p> <p>21 Exhibit 1?</p> <p>22 A. Andersson and Parah, and Sikka and -- Sikka,</p> <p>23 yeah. Kellam I already had.</p> <p>24 Q. So Andersson, Parah and Sikka.</p> <p>25 A. And Sikka.</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. What'd you provide to defendant to --</p> <p>2 Did you provide the defendant any receipts?</p> <p>3 A. I don't recall.</p> <p>4 Q. Okay. I mean, the reason why I'm asking is</p> <p>5 I've never seen that done because I've purchased many</p> <p>6 articles.</p> <p>7 A. Umm-hmm.</p> <p>8 Q. I can't even look at them until I've</p> <p>9 purchase them.</p> <p>10 A. Yeah.</p> <p>11 Q. So are you under a different plan than</p> <p>12 everyone else in the world?</p> <p>13 A. I don't know. I don't remember.</p> <p>14 Q. Well it wasn't that --</p> <p>15 A. I remember reading them and remembering</p> <p>16 wanting to print, and I had to purchase to print.</p> <p>17 Q. Okay. And you don't have those articles</p> <p>18 today with you; correct?</p> <p>19 A. Correct.</p> <p>20 Q. Were you told not to bring anything today?</p> <p>21 A. I asked, and was told I didn't need to.</p> <p>22 Q. Okay. Do you think having those articles</p> <p>23 here today would help you better answer the questions</p> <p>24 and review your report?</p> <p>25 A. I don't know. I don't -- Can't answer "yes"</p>

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1 or "no."  
 2 Q. Okay. Well we did talk about one article  
 3 regarding the traffic flow, and you didn't have it  
 4 today, and you wanted to look at --  
 5 A. Correct.  
 6 Q. -- and you wanted to look at it to answer  
 7 some questions; correct?  
 8 A. Correct.  
 9 Q. Okay. So you agree with me --  
 10 A. To -- To refresh my memory.  
 11 Q. So you agree with me that if you had brought  
 12 the articles with you today it might help you refresh  
 13 your memory.  
 14 A. It might have.  
 15 MS. LEWIS: She wasn't under an obligation  
 16 to.  
 17 THE WITNESS: Obligation to. I was not  
 18 required or requested to bring them.  
 19 Q. And just so I understand, you did not  
 20 purchase these articles before you wrote your report;  
 21 correct?  
 22 A. I purchased them -- I don't remember the  
 23 date.  
 24 Q. Well according --  
 25 A. This is the date that I submitted the

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1 invoice, but that may not have been the date I  
 2 purchased, and I don't have the receipts today.  
 3 Q. But you do have the receipts.  
 4 A. Yes.  
 5 Q. Okay. Well I ask you, please don't destroy  
 6 those receipts. I may subpoena them.  
 7 A. Okay.  
 8 MR. ASSAAD: All right. Let's take lunch.  
 9 THE WITNESS: Okay.  
 10 THE REPORTER: Off the record, please.  
 11 (Luncheon recess taken at  
 12 approximately 12:09 p.m.)  
 13  
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 16  
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1 AFTERNOON SESSION  
 2 (Deposition reconvened at  
 3 approximately 12:50 p.m.)  
 4 BY MR. ASSAAD:  
 5 Q. Are you ready to continue?  
 6 A. Yes. Thank you.  
 7 Q. In reviewing your report you have seven  
 8 references; correct?  
 9 A. Yes.  
 10 Q. And would it be fair to say that all  
 11 statements that you rely on these references you have  
 12 cited in your -- you cite -- you put a footnote in  
 13 your report?  
 14 A. Yes.  
 15 Q. Okay. And the statements that have no  
 16 references, is that just based on your personal  
 17 opinion?  
 18 A. Yes, and knowledge.  
 19 Q. And would it be fair to say that the  
 20 statements that do not have any footnotes at the end  
 21 of them in your report of Exhibit 1 you're not relying  
 22 on any literature to support those statements?  
 23 MS. LEWIS: Objection, form.  
 24 A. No.  
 25 Q. That's not fair?

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1 A. That's not fair.  
 2 Q. Okay. But sitting here today you don't --  
 3 you would not have a reference to give me to support  
 4 those statements; correct?  
 5 A. That's correct.  
 6 MS. LEWIS: Objection, form.  
 7 Q. On page 2 of your report --  
 8 Before I even get there. Are you related to  
 9 any physicians, like are you married to a physician?  
 10 A. No.  
 11 I'm the daughter of a physician.  
 12 Q. Okay.  
 13 A. I will volunteer that.  
 14 Q. Your father is a medical doctor?  
 15 A. He is. He is deceased, yes.  
 16 Q. Was he a medical doctor in Maryland?  
 17 A. No.  
 18 Q. Has he ever been sued --  
 19 A. No.  
 20 Q. -- that you're aware of? Okay.  
 21 A. No, not that I was aware of.  
 22 Q. And with respect to the ten cases that  
 23 you've consulted on or been retained by defense  
 24 counsel, in medical malpractice cases, do you recall  
 25 any of the defense counsel you worked for?

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<p style="text-align: right;">Page 110</p> <p>1 A. No.</p> <p>2 Q. Are you currently involved in any medical</p> <p>3 malpractice cases?</p> <p>4 A. No.</p> <p>5 Q. When was the last time you were involved in</p> <p>6 a medical malpractice case?</p> <p>7 A. Over fi -- four, five-ish years.</p> <p>8 Q. Okay.</p> <p>9 A. Quite awhile.</p> <p>10 Q. Okay. Is there a reason why you did not</p> <p>11 look up or provide references for statements that are</p> <p>12 in your report of Exhibit 1 that haven't been re --</p> <p>13 cited to?</p> <p>14 MS. LEWIS: Objection, form. I mean, she's</p> <p>15 got seven pages. What are you talking about in</p> <p>16 particular would be fair.</p> <p>17 MR. ASSAAD: Do you want to coach the</p> <p>18 witness some more, or?</p> <p>19 MS. LEWIS: I'm sorry?</p> <p>20 MR. ASSAAD: Do you want to coach the</p> <p>21 witness some more?</p> <p>22 MS. LEWIS: Gabe, I'm saying you've got</p> <p>23 seven pages. You're saying for every -- every</p> <p>24 sentence, every statement in the report. So I'm just</p> <p>25 saying --</p>	<p style="text-align: right;">Page 112</p> <p>1 just talking about the light boxes, or everything</p> <p>2 after that sentence?</p> <p>3 A. It could be any part of the sentence.</p> <p>4 What's not listed is, like, a robot. If you're doing</p> <p>5 robotic cases, that's not listed.</p> <p>6 Q. Is it your opinion that every single</p> <p>7 operating room has a forced-air warming device?</p> <p>8 A. No. It may.</p> <p>9 Q. Okay. And what is the purpose of this</p> <p>10 statement, in your opinion; how does this pertain to</p> <p>11 your opinions?</p> <p>12 A. Again this is to -- to lay the groundwork of</p> <p>13 the operating room itself, what pieces of equipment or</p> <p>14 devices may be in the room prior to when the patient</p> <p>15 enters the room.</p> <p>16 Q. Okay. You agree with me that the fact that</p> <p>17 these devices or equipment are in the operating room</p> <p>18 you're not going to offer any opinions with respect to</p> <p>19 whether or not these devices cause surgical-site</p> <p>20 infections; correct?</p> <p>21 A. Correct.</p> <p>22 Q. On this next sentence, on the next page,</p> <p>23 page 3, the top paragraph you say: "Many of the</p> <p>24 devices near the surgical field have their own</p> <p>25 internal motor and fan for cooling...motors."</p>
<p style="text-align: right;">Page 111</p> <p>1 MR. ASSAAD: Fine. We'll do this --</p> <p>2 MS. LEWIS: -- come on.</p> <p>3 MR. ASSAAD: -- the long way then.</p> <p>4 Thank you, Ms. Lewis. Okay.</p> <p>5 BY MR. ASSAAD:</p> <p>6 Q. Going to page 2 of your report, last</p> <p>7 paragraph, you say: "Each room will have an operating</p> <p>8 room bed" --</p> <p>9 A. Yes.</p> <p>10 Q. I wasn't done yet.</p> <p>11 A. Oh, I'm sorry. I'm just looking at the</p> <p>12 right sentence. I'm sorry.</p> <p>13 Q. Each room with will have an operating room</p> <p>14 bed, quote, unquote, surgical table, moveable overhead</p> <p>15 surgical lights, electrosurgery -- surgical cautery</p> <p>16 device, laparoscopic camera, light boxes, if required,</p> <p>17 sequential compression sleeve device, forced air</p> <p>18 warming device, IV pumps, anesthesia machine,</p> <p>19 anesthesia cart, computer work station for the RN</p> <p>20 circulator, several stainless-steel tables of various</p> <p>21 sizes, suction device, and receptacles for trash,</p> <p>22 linen and sharps.</p> <p>23 Did I read that correctly?</p> <p>24 A. Yes.</p> <p>25 Q. When you say the term "if required" are you</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Why is that in here?</p> <p>3 A. Just to talk about, again, more of the</p> <p>4 equipment that's in the room. The cautery device has</p> <p>5 a cooling unit, causes some warmth to the room. The</p> <p>6 compression devices have cooling -- have a little fan</p> <p>7 to cool the motor. So do the cameras and the light</p> <p>8 boxes.</p> <p>9 Q. Okay. You said the electrocautery unit</p> <p>10 provides warmth to the room?</p> <p>11 A. No, no, no. It has its own warmth.</p> <p>12 Q. You stated: "The cautery device has a</p> <p>13 cooling unit, causes some warmth to the room."</p> <p>14 A. Okay. Let me restate that so it's --</p> <p>15 restate it, so it's clearer.</p> <p>16 The electrocautery device has its own motor</p> <p>17 and cooling device. The fan inside, my understanding,</p> <p>18 is to cool the motor, to keep it at normal temp, keep</p> <p>19 it at a maintained temperature.</p> <p>20 Q. Okay.</p> <p>21 A. Like a computer fan, if you will.</p> <p>22 Q. Do you know how much airflow that produces?</p> <p>23 A. I do not.</p> <p>24 Q. Do you know whether or not they allow</p> <p>25 contaminants to cause surgical-site infections?</p>

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<p style="text-align: right;">Page 114</p> <p>1 A. I do not.</p> <p>2 Q. Okay. So what's the point of your opinion</p> <p>3 here? What's the purpose?</p> <p>4 A. The purpose, again, is to describe the</p> <p>5 environment for the patient and all of the devices</p> <p>6 that are in the room. It's not a, as you would</p> <p>7 describe, sterile environment, it is a clean</p> <p>8 environment with lots of pieces of equipment</p> <p>9 supporting the patient and near the patient.</p> <p>10 Q. But you have no opinion whether or not, for</p> <p>11 example, any of these devices would cause a surgical</p> <p>12 site infection.</p> <p>13 A. Correct.</p> <p>14 Q. Okay. I'm just trying to figure out --</p> <p>15 I'm representing over 2700 people in the</p> <p>16 multidistrict litigation, and I need to understand the</p> <p>17 basis for your opinions to determine whether or not</p> <p>18 your opinions are reliable. You understand that?</p> <p>19 A. Yes.</p> <p>20 Q. That's why we're here today; correct?</p> <p>21 A. Yes.</p> <p>22 Q. So for lack of, you know, going into</p> <p>23 specific detail, is the summation of your opinions</p> <p>24 that there are just many equipment and devices in the</p> <p>25 operating room and they may or may not be sterile?</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. -- all your opinions in your report --</p> <p>2 Or all your opinions are in your report of</p> <p>3 Exhibit 1 and your references, and you basically say,</p> <p>4 in conclusion, "...it is my expert opinion that the</p> <p>5 operating room is a clean, but not completely sterile,</p> <p>6 environment."</p> <p>7 A. Correct.</p> <p>8 Q. Okay.</p> <p>9 A. I would agree, yes.</p> <p>10 Q. That bacteria cannot be eliminated from the</p> <p>11 operating room environment.</p> <p>12 A. That's correct. I would agree.</p> <p>13 Q. The operating room equipment, including</p> <p>14 equipment that will be close to the surgical field,</p> <p>15 quote, and are not -- or parentheses, and are not</p> <p>16 covered by sterile drapes, closed parentheses, contain</p> <p>17 bacteria and are not sterile.</p> <p>18 A. Correct.</p> <p>19 Q. Okay. That's pretty much the sum of your</p> <p>20 opinions in this case.</p> <p>21 A. Yes.</p> <p>22 Q. Okay. But, for example, is the anesthesia</p> <p>23 machine sterile?</p> <p>24 A. No.</p> <p>25 Q. Okay. Why is that important?</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Correct.</p> <p>2 Q. Okay. But you're not going to offer any</p> <p>3 opinions of whether or not a -- a device that could be</p> <p>4 contaminated with bacteria could cause a surgical-site</p> <p>5 infection; correct?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And were you under the impression</p> <p>8 that there was a dispute among the parties of whether</p> <p>9 or not everything in the operating room was</p> <p>10 contaminated or not?</p> <p>11 A. I'm not sure I understand your question.</p> <p>12 Q. Well were you under the impression that the</p> <p>13 plaintiffs are alleging that an operating room is</p> <p>14 completely sterile?</p> <p>15 A. No, I didn't understand there -- that that</p> <p>16 was their premise.</p> <p>17 Q. Well I'm just trying to understand the</p> <p>18 purpose of your report, like what are you -- what is</p> <p>19 your conclusions besides there are devices and</p> <p>20 equipment in the operating room that may or may not be</p> <p>21 contaminated?</p> <p>22 A. I'm sorry. Ask the question again. I'm not</p> <p>23 sure I'm --</p> <p>24 Q. I've read your --</p> <p>25 A. -- able to answer -- answer your --</p>	<p style="text-align: right;">Page 117</p> <p>1 A. Why --</p> <p>2 Q. In this case?</p> <p>3 A. It's again another piece of equipment that's</p> <p>4 brought in close to the patient and could have some</p> <p>5 contaminants that are transferred to the patient.</p> <p>6 Q. How would they be transferred?</p> <p>7 A. Fingers.</p> <p>8 Q. Any other way?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Well do you agree with me that it would be a</p> <p>11 deviation of the standard of care for a surgeon or a</p> <p>12 scrub nurse or any of the assistants that are</p> <p>13 operating on the -- on the surgical site to touch the</p> <p>14 anesthesia machine and then put their hands into the</p> <p>15 sterile field?</p> <p>16 A. Correct. That would be incorrect. That</p> <p>17 would not be good practice.</p> <p>18 Q. Okay. Actually, if a patient got infected,</p> <p>19 if a scrub nurse touched the anesthesia machine and</p> <p>20 then touched the sterile field and there was an</p> <p>21 infection, you'd agree with me that you would probably</p> <p>22 testify that that scrub nurse deviated from the</p> <p>23 standard of care; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Now let's just assume that doctors</p>



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<p style="text-align: right;">Page 118</p> <p>1 are doing what they're supposed to be doing and  2 following the standard of care, and all of the nurses  3 are following the standard of care. You agree with me  4 that the fact that the anesthesia machine has bacteria  5 on it --  6 A. I'm not aware of that it has bacteria on it.  7 Q. Well it can be contaminated, potentially.  8 A. Potentially.  9 Q. Wait.  10 Do you know whether or not any of the  11 devices have bacteria on them or not?  12 A. I do not.  13 Q. Okay. But for the -- for patient safety you  14 assume they do when you teach proper regulations and  15 procedures in the operating room.  16 A. Yes.  17 Q. Okay. So unless someone -- unless you  18 transfer any of the potential contaminants on an  19 anesthesia machine directly to the surgical site, the  20 -- by contact, you agree with me that unless that  21 deviation of the standard of care occurs, that the --  22 there's no way that the bacteria on the anesthesia  23 machine is going to transfer to the surgical site and  24 cause an infection; correct?  25 MS. LEWIS: Objection, form.</p>	<p style="text-align: right;">Page 120</p> <p>1 MS. LEWIS: Object to the form.  2 A. I don't know that I can answer that.  3 Q. Okay. Do you know whether or not the Bair  4 Hugger's contaminated?  5 A. I do not.  6 Q. Okay. Were you ever --  7 Were you ever told by 3M that they concede  8 that the Bair Hugger is not sterile?  9 A. No. It is not -- It is not sterile.  10 Q. Were you ever told by 3M that they're aware  11 that the hose of the -- inside the hose of the Bair  12 Hugger contains or harbors bacteria?  13 A. No.  14 MS. LEWIS: Objection to form.  15 Q. Did you do a search to find out whether or  16 not the Bair Hugger contains, or is -- harbors  17 bacteria?  18 A. Did I do a what?  19 MS. LEWIS: Same objection.  20 Q. Any research.  21 A. No.  22 Q. You write on page 2, "as each piece" -- at  23 the bottom of page 2, the last sentence.  24 A. Umm-hmm. Okay.  25 Q. "As each piece of equipment is put into use,</p>
<p style="text-align: right;">Page 119</p> <p>1 A. I'm not sure I follow your question.  2 Q. Okay. Okay.  3 A. Try -- I'm trying to follow it.  4 Q. We discussed that the anesthesia machine, if  5 it is contaminated, that the only way that the  6 contaminants would be transferred from the anesthesia  7 machine to the surgical site would be by contact.  8 A. Touch.  9 Q. Okay.  10 A. Yes. We agree.  11 Q. You don't believe that the bacteria could be  12 aerosolized; correct?  13 A. I don't know if --  14 Q. Okay.  15 A. -- if it could or could not.  16 Q. Okay.  17 A. I don't have that knowledge.  18 Q. Okay. So my point is that if the -- if  19 the healthcare providers, the surgeons, the  20 assistants, the nurses in the operating room are  21 following the standard of care, the fact that there  22 may be contaminants on the anesthesia machine is not a  23 risk factor for causing surgical-site infections  24 during an operation.  25 A. I --</p>	<p style="text-align: right;">Page 121</p> <p>1 it is then brought close to the surgical field."  2 What's the importance of that?  3 A. I think... It's just, again, describing the  4 lo -- the patient and the patient process in the room  5 and how the patient is the center and the equipment  6 then is brought in close to support the patient.  7 Q. Does that have any relevance with respect to  8 the risk of infection?  9 A. Not with just one sentence, no.  10 Q. Well --  11 A. No.  12 Q. -- the fact --  13 A. No.  14 Q. The fact that equipment are brought close to  15 the patient that -- and brought close to the surgical  16 field that may be contaminated, is that relevant to  17 the risks of a surgical-site infection?  18 MS. LEWIS: Objection to form.  19 A. Say that question again.  20 Q. Well I talk --  21 You talk about the operating room is clean,  22 but not sterile; correct?  23 A. Umm-hmm.  24 Q. "Yes"?  25 A. Yes.</p>



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<p style="text-align: right;">Page 122</p> <p>1 Q. And you're discussing this talking about the  2 -- like, devices that are not sterile --  3 A. Correct.  4 Q. -- in the operating room; correct?  5 A. Correct.  6 Q. And you talk about, you know, devices that  7 are not sterile that are brought close to the surgical  8 field; correct?  9 A. Yes.  10 Q. What's your point?  11 A. There is no point. I'm just --  12 Q. Okay.  13 A. It's a com --  14 It's just a statement as is.  15 Q. Okay. Is it --  16 Is it your opinion that it's okay to have  17 non-sterile equipment next to the surgical field?  18 A. When appropriate.  19 Q. When would it be appropriate?  20 A. Again, the cautery device, the machine  21 itself is not sterile, it's brought up adjacent to the  22 sterile field; not touching the drapes, but adjacent  23 to it.  24 Q. But the cautery itself, which goes into the  25 surgical -- into the wound, is sterile.</p>	<p style="text-align: right;">Page 124</p> <p>1 sleeve device, closed parentheses, contain bacteria  2 and are not sterile."  3 (Interruption by the reporter.)  4 A. Correct.  5 Q. So now you -- now you're saying that you are  6 -- it's your opinion now that they actually contain  7 bacteria?  8 A. They may contain bacteria, yes.  9 Q. Well do they may contain or do they contain?  10 There's a big difference.  11 A. May.  12 Q. "May"?  13 A. May.  14 Q. So is that statement wrong then, it should  15 say "may"?  16 A. No. I'm saying they probably do contain  17 bacteria.  18 Q. Well --  19 A. Yeah.  20 Q. -- which one is it?  21 A. We'll say as my statement is written. I do  22 not want to change it.  23 Q. Okay. So now they contain bacteria.  24 A. Correct.  25 Q. Not "may" contain, but they contain</p>
<p style="text-align: right;">Page 123</p> <p>1 A. Is sterile.  2 Q. Okay.  3 A. Device. But the machine is not.  4 Q. Okay. You agree that there is a difference  5 between "not sterile" and "contaminated"?  6 A. There are two different definitions.  7 Q. Okay. What's your definition of "not  8 sterile"?  9 A. Unsterile. Unsterile and not sterile --  10 Unsterile is something that is considered not sterile,  11 but it may in fact be clean. Depends on the device.  12 Contaminated means it may have gross  13 bacteria or gross contamination, spill of blood or  14 body fluid.  15 Q. You mentioned that you're not sure whether  16 or not the non-sterile equipment contained bacteria.  17 Remember that?  18 A. Yes.  19 Q. But if you look at your sentence on page 3  20 you say: "The equipment in the operating room  21 including equipment that will be close to the surgical  22 field (examples, anesthesia machine, electrosurgical  23 cautery device, IV poles and pumps, anesthesia cart,  24 computer monitors and hard drives, patient warming  25 devices, suction bottles, overhead lights, compression</p>	<p style="text-align: right;">Page 125</p> <p>1 bacteria.  2 A. Correct.  3 Q. Okay. And it's your opinion that -- that  4 bringing in devices close to a sterile field that  5 contain bacteria is acceptable.  6 A. Yes.  7 Q. You agree with me that none of those devices  8 that -- except for the forced-air warming device,  9 blows significant amount of air; correct?  10 MS. LEWIS: Objection to form.  11 A. No.  12 Q. What else blows significant amount of air?  13 A. I mentioned all of the i -- that other items  14 had internal motors and fans for cooling.  15 Q. But you don't even -- you don't even know  16 the volumetric flow of those fans.  17 A. I don't know the volu --  18 That's correct.  19 Q. You feel the air coming out of a Bair Hugger  20 blanket; correct?  21 A. Yes.  22 Q. Okay. You actually put it --  23 It was gentle or mild airflow; correct?  24 A. Yes.  25 Q. Have you ever felt air coming out of the</p>

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<p>1 anesthesia machine?</p> <p>2 A. Yes.</p> <p>3 Q. Where?</p> <p>4 A. In the back.</p> <p>5 Q. "In the back," okay.</p> <p>6 A. Umm-hmm.</p> <p>7 Q. Away from the surgical table; correct?</p> <p>8 A. Depends on the position of the machine.</p> <p>9 Q. So you're telling me that you've seen an</p> <p>10 anesthesiologist put an anesthesia machine facing</p> <p>11 backwards?</p> <p>12 A. Potentially.</p> <p>13 Q. You've seen that done?</p> <p>14 A. Yes.</p> <p>15 Q. Where? Give me the date and time because I</p> <p>16 want to talk to this doctor.</p> <p>17 A. I can't give you a date.</p> <p>18 Q. It was abnormal; wasn't it?</p> <p>19 A. It was a procedure that we turned the bed,</p> <p>20 and so in turning the bed we moved the anesthesia</p> <p>21 machines and all of the equipment to support the</p> <p>22 patient. Depends on -- It's patient and surgical</p> <p>23 procedure dependent.</p> <p>24 Q. What about a total knee or total hip?</p> <p>25 A. Probably not.</p>	<p>1 A. Not necessarily.</p> <p>2 Q. Talking about the electrocautery device.</p> <p>3 A. Not necessarily. Depending on the size and</p> <p>4 height of the stand.</p> <p>5 Q. Do you know the airflow coming out of that?</p> <p>6 A. No.</p> <p>7 Q. Okay. What else is --</p> <p>8 What else do you feel blowing air in the</p> <p>9 operating room?</p> <p>10 A. Cameras, light cords, computers.</p> <p>11 Q. You feel air coming out of the computers.</p> <p>12 A. Some of them, yeah. Some of them are old,</p> <p>13 big PCU units.</p> <p>14 Q. And where are the computers located?</p> <p>15 A. The floor.</p> <p>16 Q. Huh?</p> <p>17 A. The floor.</p> <p>18 Q. In the surg -- Under the --</p> <p>19 Near the surgical site?</p> <p>20 A. No, on the workstation for the --</p> <p>21 Q. Which is against the wall, usually.</p> <p>22 A. Usually.</p> <p>23 Q. Okay.</p> <p>24 A. Or on a WOW, a movable cart.</p> <p>25 Q. And how long is the electrocautery device</p>
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<p>1 Q. Okay. And how much airflow do you feel</p> <p>2 coming out of the exhaust of a -- of a anesthesia</p> <p>3 machine?</p> <p>4 A. Enough to feel it. I can't give you the</p> <p>5 velocity.</p> <p>6 Q. What about the electrosurgical cautery</p> <p>7 device, do you feel air --</p> <p>8 A. Enough to feel it, yes. Yes.</p> <p>9 Q. But the --</p> <p>10 Where is the fan?</p> <p>11 A. In the back.</p> <p>12 Q. In the back of the device that goes in the</p> <p>13 surgical --</p> <p>14 A. In the back of the --</p> <p>15 Q. -- in the wound?</p> <p>16 A. -- of the device itself.</p> <p>17 Q. Okay. And where's that device sit?</p> <p>18 A. On a stand.</p> <p>19 Q. Where? How far?</p> <p>20 In front of the surgeon or behind the</p> <p>21 surgeon?</p> <p>22 A. It can be next to or behind or across from;</p> <p>23 again, depending on the procedure.</p> <p>24 Q. But you agree with me that the device is</p> <p>25 above the operating room table.</p>	<p>1 used in a total hip or total knee surgery?</p> <p>2 A. The whole procedure. The entire procedure.</p> <p>3 Q. You're telling me they're using an</p> <p>4 electrocautery device during the entire procedure?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. What does the electrocautery device</p> <p>7 do?</p> <p>8 A. Cauterizes and cuts tissue.</p> <p>9 Q. Okay. And they're cutting and cauterizing</p> <p>10 the entire procedure?</p> <p>11 A. Yep. Yes.</p> <p>12 Q. How long does a total hip or total knee</p> <p>13 last?</p> <p>14 A. Depends on the surgeon.</p> <p>15 Q. In your experience?</p> <p>16 A. A knee can be an hour or more, and a hip can</p> <p>17 be an hour and a half or more.</p> <p>18 Q. You say computer monitors blow air?</p> <p>19 A. Yes.</p> <p>20 Q. And you can -- And you can feel them?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 A. The --</p> <p>24 Q. You don't know --</p> <p>25 You don't know the rate, the velocity?</p>

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1 A. No. No.  
 2 Q. Okay. Just out of curiosity, did you go to  
 3 an operating room after you'd been retained in this  
 4 case to go see what blows air?  
 5 A. No. No. This is all from my recollection  
 6 and memory.  
 7 Q. Okay. And a hard drive, to you, blows air?  
 8 A. I'm talking about the little -- the unit  
 9 that sits on the floor, the PC unit where you can put  
 10 in discs and things. I don't know if that's called  
 11 the hard drive or the --  
 12 Q. Now every computer that I've ever used, --  
 13 A. Uh-huh.  
 14 Q. -- like, it sits and the fan's in the back  
 15 of the computer; correct?  
 16 A. Well it's dependent on where that box sits,  
 17 if the box is sitting facing the wall or -- or out.  
 18 I'm not talking about a laptop, --  
 19 Q. Understood.  
 20 A. -- I'm talking about a --  
 21 Q. A CPU.  
 22 A. Yes, a CPU. Thank you.  
 23 Q. And you're saying that you feel --  
 24 You agree with me that the fan is usually in  
 25 the back.

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1 A. It's on the side. The ones I've seen it's  
 2 been on the side. I -- It's mounted vertically, not  
 3 horizontally, and so it's on that, like --  
 4 Q. Are you seeing --  
 5 Like could you see holes on the side of the  
 6 --  
 7 A. Yeah.  
 8 Q. Okay.  
 9 A. And the fan --  
 10 And the whole round area where the fan sits.  
 11 Q. And you believe that's on the side of a CPU?  
 12 A. I don't know if it's the side or the end. I  
 13 don't know.  
 14 Q. Okay. You're -- I mean, you're guessing;  
 15 right?  
 16 A. Well I'm describing what my recollection of  
 17 the unit looks like.  
 18 Q. Okay. Do you have any reason to believe  
 19 that that fan could cause contaminants to reach the  
 20 surgical site?  
 21 A. I have no knowledge of that.  
 22 Q. Okay. What about with respect to the  
 23 electrocautery device, do you believe any reason that  
 24 fan --  
 25 A. I have no knowledge of that.

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1 Q. And with respect to all these devices that  
 2 potentially blow air, you're relying on your personal  
 3 experience and not any literature to support that;  
 4 correct?  
 5 A. Correct.  
 6 Q. You write here, it is also my expert opinion  
 7 that the action of wiping down equipment will  
 8 decrease, not eliminate or kill, all the bacterial  
 9 load on the surfaces of the equipment.  
 10 What are you referring to to support that  
 11 statement?  
 12 A. In my knowledge as an OR nurse we are not as  
 13 efficient as we could be in our wiping, or we're not  
 14 using the product appropriately.  
 15 Q. So you're saying it's human error.  
 16 A. Correct.  
 17 Q. Okay. And when you say you're not wiping as  
 18 efficient or using the product, have you done any  
 19 testing or research to see anything?  
 20 A. No. No.  
 21 Q. So this is basically a guess on your part.  
 22 MS. LEWIS: Objection, form.  
 23 A. It's from my experience, not -- not as a  
 24 guess.  
 25 Q. Well how do you know? I mean, if you don't

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1 test the --  
 2 A. I've observed it. I've observed. From my  
 3 observations.  
 4 Q. But have you done testing?  
 5 A. No.  
 6 Q. Have said, like, well let's check the  
 7 bacterial load, or do swabs?  
 8 A. No.  
 9 Q. Okay. So you're just basically saying, hey,  
 10 I see this person clean the operating room, I don't  
 11 see them doing a good job, so there might be more  
 12 bacteria because of my observation.  
 13 A. Yes.  
 14 Q. Okay. No scientific basis at all.  
 15 A. Correct.  
 16 Q. On page 3 you talk about the drapes on the  
 17 first -- you know, bringing in the drapes into the  
 18 operating room.  
 19 A. Yes.  
 20 Q. Then you say: "During any procedure that  
 21 will involve an implant, traffic into and out of the  
 22 room is restricted."  
 23 And we talked about that before; correct?  
 24 A. Yes.  
 25 Q. But sitting here today you have -- does that

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<p style="text-align: right;">Page 134</p> <p>1 have anything to do with contamination of the drapes?</p> <p>2 A. No.</p> <p>3 Q. Okay. Can bacteria go through -- get</p> <p>4 through the drapes?</p> <p>5 A. Not to my knowledge, but I'm not the</p> <p>6 researcher that would know that answer.</p> <p>7 Q. I mean, from what I am reading here, there's</p> <p>8 something different about an implant surgery, whether</p> <p>9 it's a breast implant or hernia, than many other types</p> <p>10 of surgeries; correct?</p> <p>11 A. Yes, in the traffic --</p> <p>12 Q. Okay.</p> <p>13 A. -- restrictions, traffic restrictions.</p> <p>14 Q. And I assume that is because those types of</p> <p>15 surgeries, those implants are very susceptible to</p> <p>16 infection.</p> <p>17 A. No. That's not my answer.</p> <p>18 Q. Well then why care?</p> <p>19 A. Because those procedures are more difficult</p> <p>20 for the patient if they have to come back for a</p> <p>21 different procedure.</p> <p>22 Q. Why would they have to come back?</p> <p>23 A. If in fact the implant is infected.</p> <p>24 Q. Okay. So you don't want the implant to get</p> <p>25 infected; correct?</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. So you just want to talk about what you do</p> <p>2 for these total hip and total knee, but you have no</p> <p>3 idea why you do it?</p> <p>4 MS. LEWIS: Objection, form.</p> <p>5 A. That isn't what I said.</p> <p>6 Q. Well tell me why you do it.</p> <p>7 A. It's based on good literature.</p> <p>8 Q. Are the total hip patients more important</p> <p>9 than the colorectal patients?</p> <p>10 A. No.</p> <p>11 Q. Okay. Are they more important than the eye</p> <p>12 surgery patients?</p> <p>13 A. No.</p> <p>14 Q. Are they more important than the -- you</p> <p>15 know, what a -- what a ENT does, like some other</p> <p>16 surgery that they do?</p> <p>17 A. No.</p> <p>18 Q. Okay. So why -- why give them better</p> <p>19 precautions and do more for a total hip or total knee</p> <p>20 than you do for other types of surgeries?</p> <p>21 A. It's not better or worse.</p> <p>22 Q. Well you are doing way more things -- I</p> <p>23 mean, you're not allowing peo -- you're restricting</p> <p>24 access to the operating room; correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 135</p> <p>1 A. Correct.</p> <p>2 Q. And you do all these procedures to prevent</p> <p>3 infection; correct?</p> <p>4 A. Correct.</p> <p>5 Q. And that is to limit traffic; correct?</p> <p>6 A. Yes.</p> <p>7 Q. To make sure to keep the sterile field as</p> <p>8 sterile as possible; correct?</p> <p>9 A. Yes.</p> <p>10 Q. So you agree with me that you do these extra</p> <p>11 precautions for implant surgeries because they're more</p> <p>12 susceptible to infection.</p> <p>13 A. Not more susceptible. That's not what I</p> <p>14 said.</p> <p>15 Q. Then why do everything if they're not more</p> <p>16 susceptible?</p> <p>17 A. You do it as a precaution to preve -- to</p> <p>18 decrease their risk.</p> <p>19 Q. Why don't you do that for all surgeries,</p> <p>20 then?</p> <p>21 A. That would be a good goal for all surgeries.</p> <p>22 Q. Why not? Why for total hip and total knee</p> <p>23 and not for colorectal?</p> <p>24 A. Good question. I don't have an answer for</p> <p>25 that.</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. Okay. You are limiting traffic in the</p> <p>2 operating room; correct?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. You are --</p> <p>5 I mean, you even put down here that you have</p> <p>6 someone standing on the outside so you don't have to</p> <p>7 open the door, okay?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Because there's something about</p> <p>10 traffic and opening the door that increases the risk</p> <p>11 of something.</p> <p>12 A. Correct.</p> <p>13 Q. Correct?</p> <p>14 A. And that's what I cited in my references.</p> <p>15 Q. Okay. It increases the risk of infection.</p> <p>16 Okay.</p> <p>17 A. Potential for. The risk --</p> <p>18 Q. What do you mean by "potential for"?</p> <p>19 A. Potential for infection.</p> <p>20 Q. Okay.</p> <p>21 A. It doesn't say that opening and closing the</p> <p>22 door causes infection. It increase --</p> <p>23 Q. Did I ask you that, ma'am? I didn't ask --</p> <p>24 I said "increases the risk of infection." I</p> <p>25 didn't say it's going to give you an infection.</p>

<p style="text-align: right;">Page 138</p> <p>1 Increases the risk. Do you understand what that 2 means? 3 A. Yes. 4 Q. Okay. I mean you've heard that before as a 5 nurse; correct? 6 A. Yes. 7 Q. There's certain things that increase the 8 risk of infection, and some things that don't make a 9 difference; correct? 10 A. Yes. 11 Q. Okay. Like, for example, if I, you know, 12 don't wash my hands, okay, and do a surgery, that's 13 going to increase the risk of infection; correct? 14 A. Correct. 15 Q. Okay. If you open the doors you believe 16 it's going to increase the risk of infection. 17 A. Correct. 18 Q. Okay. So what is it about opening doors 19 that increases the risk of infection that increases it 20 for a total hip but doesn't increase it for a 21 colorectal? 22 MS. LEWIS: Objection, form. 23 A. They're two different types of procedures. 24 Colorectal procedure has its own inherent risks from 25 body organisms, whereas the total joint does not.</p>	<p style="text-align: right;">Page 140</p> <p>1 Do you wish to stand by your previous 2 answers? 3 THE WITNESS: Yes. 4 MR. ASSAAD: Are you instructing her not to 5 answer? 6 THE WITNESS: No. 7 A. I have answered the question. I'm not 8 changing my answer. 9 Q. Do you agree with me that opening the door 10 may -- Strike that. 11 Do you agree with me by having a lot of 12 traffic in the operating room might increase the 13 bacterial load in the operating room? 14 A. I don't know that for a fact. 15 Q. Why does it matter if the airflow is 16 disturbed in the operating room? 17 A. We want to maintain the positive flow over 18 the patient. 19 Q. But what does the positive flow do? 20 A. The positive flow again brings that clean -- 21 clean, fresh air, some from the outside, away -- down 22 over the surgical site and then away to the exhaust. 23 Q. And that's because that's the cleanest air 24 in the operating room, the air that's coming out of 25 the ventilation.</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. You have absolutely no idea why the 2 literature says do not open doors in the operating 3 room for a total hip or total knee. 4 A. Yes, I do. 5 Q. Huh? 6 MS. LEWIS: Objection, argumentative. 7 A. Yes, I do. 8 Q. Well what is it then; why? I've asked you, 9 like, five times, and you don't tell me why is it 10 about opening doors that increases the risk of 11 infection for a total hip. 12 A. I'm not sure -- 13 MS. LEWIS: Hold on. 14 A. -- I understand your question. 15 MS. LEWIS: If it's asked and answered do 16 you want to stand by your previous answer? 17 THE WITNESS: Yeah. I'm -- 18 MR. ASSAAD: It hasn't been answered. 19 MS. LEWIS: It has been answered. You said 20 you've asked five times and she's given you an 21 answer. 22 MR. ASSAAD: I said I've asked five times. 23 I said -- I haven't said it's been answered five 24 times. 25 MS. LEWIS: She's answered five times.</p>	<p style="text-align: right;">Page 141</p> <p>1 A. All the room -- 2 All of the air in the room is clean. That's 3 where the flow is of the air, is over the surgical 4 field. 5 Q. So you think that the air that's coming out 6 of that vent up there [indicating] is the same level 7 of cleanli -- of cleanliness as it is close to the 8 floor? 9 A. Yes. 10 Q. Okay. Healthcare workers wear masks over 11 their mouth, correct, in the OR? 12 A. Yes. 13 Q. Why? 14 A. Because it has been shown and researched, 15 and I cannot cite the study, that talking and 16 particles that potentially come from the mouth could 17 in fact potentially contaminate a surgical site. 18 Q. So the particles could become airborne, 19 contaminated particles; correct? 20 A. Coughed or sneezed or talking, yes. 21 Q. Okay. So you do agree that airborne 22 particles can cause surgical-site infections. 23 MS. LEWIS: Objection, form. 24 MR. ASSAAD: Basis? 25 MS. LEWIS: Foundation.</p>



1 MR. ASSAAD: "Foundation"? Okay.  
 2 Q. You do believe that airborne particles can  
 3 cause surgical-site infections.  
 4 MS. LEWIS: Same objection.  
 5 A. Potential. I don't know what you mean by  
 6 "airborne particles."  
 7 Q. Well if someone --  
 8 A. What do you mean by "airborne particles"?  
 9 Q. You don't know what "airborne particles"  
 10 means?  
 11 A. I'm not sure I understand what --  
 12 Q. If you don't understand what it means, we'll  
 13 just move on.  
 14 A. Okay.  
 15 Q. Do you understand what it means?  
 16 MS. LEWIS: She doesn't understand --  
 17 A. No.  
 18 MS. LEWIS: -- what you mean.  
 19 A. What I -- What you're trying to ask in the  
 20 question.  
 21 Q. Do you know what the term "airborne" means?  
 22 A. Yes.  
 23 Q. Okay. I mean, you're a nurse; correct?  
 24 A. Yes.  
 25 Q. And you understand that there could be --

1 you know, as -- you wear a mask because you don't want  
 2 to release any type of contaminants from your mouth  
 3 that are particles or bacteria into the air that might  
 4 end up in the surgical site; correct?  
 5 A. Correct. I would agree with that.  
 6 Q. So you've heard the term "airborne  
 7 particles" before.  
 8 A. Correct.  
 9 Q. Okay. So you do know what I mean when I say  
 10 "airborne particles in an operating room."  
 11 A. Yes.  
 12 Q. Okay. So you do agree that airborne  
 13 particles can cause surgical-site infections.  
 14 A. Potentially.  
 15 Q. I said "can cause." I didn't --  
 16 Okay. You believe that airborne particles  
 17 can potentially cause surgical-site infections.  
 18 A. Yes.  
 19 MS. LEWIS: Objection to the form.  
 20 Q. Do you agree with me that the sterile table  
 21 is one of the responsibilities of a scrub nurse?  
 22 A. Yes.  
 23 Q. Okay. And it's very important to protect  
 24 that sterile table from contamination; correct?  
 25 A. Yes.

1 Q. Because the sterile table has instruments  
 2 that are going to be used in the surgical site;  
 3 correct?  
 4 A. Yes.  
 5 Q. And it may contain the implant that's going  
 6 to be implanted into the surgical site in a total knee  
 7 and total hip arthroplasty; correct?  
 8 A. No.  
 9 Q. Where is that going to be located?  
 10 A. The implant won't be opened until just prior  
 11 to its use.  
 12 Q. But it does get opened.  
 13 A. Yes.  
 14 Q. Okay. And you'd agree with me that many  
 15 surgeons, orthopedic surgeons are very careful with  
 16 handling the implant; correct?  
 17 A. Correct.  
 18 Q. They even replace their gloves before they  
 19 handle the implant.  
 20 A. Correct.  
 21 Q. Okay. Because they don't want to  
 22 contaminate the implant because of a risk of surgical  
 23 -- of causing a periprosthetic joint infection. Wait.  
 24 You don't know what that means.  
 25 You don't want -- You don't want them to

1 contaminate the implant because it may cause a  
 2 surgical-site infection.  
 3 A. Correct.  
 4 Q. On page 4, under the patient flow in the  
 5 operating room, I guess that's what you meant by  
 6 "flow," "patient flow."  
 7 A. Correct.  
 8 Q. Okay.  
 9 A. I probably should have used a different  
 10 word, but yes. Patient process.  
 11 Q. You write on the second paragraph under  
 12 there, the device is -- you talk about compression  
 13 stockings.  
 14 A. Yes.  
 15 Q. It says: "This device is used to decrease  
 16 the risk of post-operative deep vein thrombosis" or  
 17 "blood clot"?  
 18 A. Yes.  
 19 Q. What does that have to do with any of the  
 20 issues in this case?  
 21 A. I'm talking about, again, the patient flow,  
 22 all of the pieces of equipment that are used on the  
 23 patient in support of the patient during their  
 24 surgical procedure.  
 25 Q. What does that have to do with the issues in

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<p style="text-align: right;">Page 146</p> <p>1 this case?</p> <p>2 A. It's also another device that has a fan.</p> <p>3 Q. A compression stocking?</p> <p>4 A. The device, yes.</p> <p>5 Q. What device of a compression stocking has a</p> <p>6 fan?</p> <p>7 A. It's a little motor that sits either on an</p> <p>8 IV pole or on a stand or on the floor, and it blow --</p> <p>9 inflates a stocking on the patient's leg during the</p> <p>10 procedure.</p> <p>11 Q. But then it stops.</p> <p>12 A. At the end of the procedure.</p> <p>13 Q. It keeps on --</p> <p>14 A. It runs dur -- It runs during the whole</p> <p>15 procedure.</p> <p>16 Q. It keeps on inflating the entire time?</p> <p>17 A. Inflates and deflates and inflates, so sort</p> <p>18 of massaging the leg, yes. And will be used on the</p> <p>19 nonoperative leg.</p> <p>20 Q. Okay. Do you know whether or not they're</p> <p>21 used on total hip and total knee?</p> <p>22 A. I would say yes, on the nonoperative leg.</p> <p>23 Q. Okay. Is it used perioperatively?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So it's your opinion --</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. Why is blowing air important? Why is that</p> <p>2 relevant?</p> <p>3 A. Irrelevant?</p> <p>4 Q. No. Why is it relevant to your --</p> <p>5 I mean, you've listed all these things that</p> <p>6 may blow air. Why is it relevant to your opinions?</p> <p>7 A. It's relevant whether or not the dis --</p> <p>8 there's a disruption to the flow, the positive flow</p> <p>9 for the -- around the patient and the surgical site.</p> <p>10 Q. But you're not an engineer that could</p> <p>11 determine that; correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Did you do any research to determine</p> <p>14 whether -- whether or not any of these devices that</p> <p>15 blow air have any effect on the airflow in an</p> <p>16 operating room?</p> <p>17 A. No.</p> <p>18 Q. Okay. Were you --</p> <p>19 I mean, was that part of your objective is</p> <p>20 -- objectives in this case is to identify all the</p> <p>21 equipment that blow air?</p> <p>22 A. No.</p> <p>23 Q. You just decided to come up with that on</p> <p>24 your own?</p> <p>25 A. No. I'm just, again, describing all of the</p>
<p style="text-align: right;">Page 147</p> <p>1 A. And it may also be used postoperatively.</p> <p>2 Q. And sitting here today --</p> <p>3 Do you know whether or not they're used by</p> <p>4 all surgeons during --</p> <p>5 A. I do not.</p> <p>6 Q. Okay.</p> <p>7 A. I do not.</p> <p>8 Q. By the way, have you ever worked outside of,</p> <p>9 like, the Maryland region?</p> <p>10 A. Massachusetts and New Jersey.</p> <p>11 Q. Okay. Was that --</p> <p>12 At what point in your life?</p> <p>13 A. The last two years.</p> <p>14 Q. Okay. As a nurse?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. But you agree with me that this case</p> <p>17 is not about blood clots.</p> <p>18 A. Correct.</p> <p>19 Q. Okay.</p> <p>20 A. Correct.</p> <p>21 Q. Was one of your objectives in writing your</p> <p>22 report is to go through an operating room and identify</p> <p>23 everything that may blow air?</p> <p>24 A. No. It's to describe the -- again, the</p> <p>25 patient process.</p>	<p style="text-align: right;">Page 149</p> <p>1 pieces of equipment around the patient.</p> <p>2 Q. Okay. You write: "The disposable Bair</p> <p>3 Hugger blanket is attached to the patient with an</p> <p>4 adhesive strip placed on the chest usually above the</p> <p>5 nipple line."</p> <p>6 A. Yes.</p> <p>7 Q. Where's the nipple line?</p> <p>8 A. Right where it sounds like.</p> <p>9 Q. So you're saying it's taped right here</p> <p>10 [indicating]?</p> <p>11 A. Or above, depending -- depending on the</p> <p>12 procedure it may be taped low --</p> <p>13 Q. Well --</p> <p>14 A. -- but that's a marker that we use.</p> <p>15 Q. So the total -- a total hip and total knee</p> <p>16 surgery, what type of blanket would you use?</p> <p>17 A. Upper body.</p> <p>18 Q. Okay. And where is it usually taped?</p> <p>19 A. I'm going to answer depending on where the</p> <p>20 surgeon wants -- how much of the hip he wants prepped.</p> <p>21 If he wants prepped very high, then you're going to</p> <p>22 put the blanket above away from where his surgical</p> <p>23 prep area is going to be.</p> <p>24 Q. Okay. So you think that the 522 blanket's</p> <p>25 adjustable with the height?</p>

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<p>1 A. What does that mean?</p> <p>2 Q. Like you can move -- you could place it at</p> <p>3 different areas? Like you could tape it at different</p> <p>4 areas on the chest?</p> <p>5 A. Are you asking do we?</p> <p>6 Q. I'm saying that's what you believe, --</p> <p>7 A. Yes.</p> <p>8 Q. -- the five twenty --</p> <p>9 A. Yes.</p> <p>10 Q. -- the Bair Hugger upper body blanket?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Well aren't you concerned that if you</p> <p>13 put it too high up you're going to obstruct the -- the</p> <p>14 face and the mouth of the -- of the patient for the</p> <p>15 anesthesia?</p> <p>16 A. No. It has a little kind of cutout and a</p> <p>17 drape for the head for anesthesia to have access.</p> <p>18 Q. I understand that, but it also has a width</p> <p>19 of the blanket, has a certain width; correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And what do you think happens when</p> <p>22 you put air into the Bair Hugger blanket, you think</p> <p>23 it's going to stay -- in what shape is it going to</p> <p>24 take; do you even know?</p> <p>25 A. I'm not sure I understand your question.</p>	<p>1 A. I was doing a Periop 101 course with</p> <p>2 students there and then assisting them with building</p> <p>3 -- moving into a new OR.</p> <p>4 Q. Okay. On page 4, second-to-last paragraph</p> <p>5 you say: "Research has shown forced-air warming</p> <p>6 devices to be safe for use in the operating room," and</p> <p>7 you cite --</p> <p>8 A. Sikka and Kellam.</p> <p>9 Q. You cite AORN Guideline For the Prevention</p> <p>10 of Unplanned Hypothermia.</p> <p>11 A. Correct. Sorry.</p> <p>12 Q. That's not Sikka; correct?</p> <p>13 A. I'm sorry. No. I'm sorry, I mis -- I</p> <p>14 looked at the numbers wrong.</p> <p>15 Q. So you're citing a nursing guideline --</p> <p>16 A. Correct.</p> <p>17 Q. -- for this statement; correct?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Do you know what research they did?</p> <p>20 A. No.</p> <p>21 Q. So when you went and -- and put the Bair</p> <p>22 Hugger blanket back in April of this year, was it</p> <p>23 Lauren hospital, Lawrence?</p> <p>24 A. Lawrence.</p> <p>25 Q. Lawrence? Was that to teach -- to teach a</p>
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<p>1 Q. When you blow up --</p> <p>2 When you blow up the blanket with air, --</p> <p>3 A. Yes.</p> <p>4 Q. -- do you think it's going to -- it's going</p> <p>5 to take its own shape, it's going to expand; correct?</p> <p>6 A. Right. Into the shape of the blanket.</p> <p>7 Q. Okay. And you think that there is enough</p> <p>8 room in there between the tape and the plastic that</p> <p>9 covers the face that you have adjustability of how</p> <p>10 high or low you want to put the blanket?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. When was the last time you placed a</p> <p>13 522 upper body blanket on a -- on a patient?</p> <p>14 A. Probably in April this year.</p> <p>15 Q. And you yourself placed it?</p> <p>16 A. Yes.</p> <p>17 Q. What kind of surgery?</p> <p>18 A. Abdominal.</p> <p>19 Q. Where? What hospital?</p> <p>20 A. Lawrence General.</p> <p>21 Q. Where is that?</p> <p>22 A. Lawrence, Massachusetts.</p> <p>23 Q. Are you a traveling nurse now?</p> <p>24 A. No. I'm an education consultant.</p> <p>25 Q. So why are you working up in Massachusetts?</p>	<p>1 class?</p> <p>2 A. No. It was assisting with a procedure.</p> <p>3 Q. So you're allowed to go off into another</p> <p>4 hospital and just assist with a procedure?</p> <p>5 A. No. I was there as an employee.</p> <p>6 Q. Okay. Was it like a temporary employee?</p> <p>7 A. Six months.</p> <p>8 Q. Okay. How did you find the Sikka article?</p> <p>9 A. How did I find it?</p> <p>10 Q. Yeah.</p> <p>11 A. Probably from looking back at the AORN</p> <p>12 Guidelines. I don't know that I did a search for just</p> <p>13 forced warmed air.</p> <p>14 Q. Did you do --</p> <p>15 A. I don't remember.</p> <p>16 Q. Did you do any search on a computer?</p> <p>17 A. For forced air? I looked at the AORN</p> <p>18 Guidelines for -- not only for unplanned, but also</p> <p>19 looked at Kellam. I had read Kellam previously. So</p> <p>20 looked at Kellam's sources also.</p> <p>21 Q. Have you done any Google searches?</p> <p>22 A. No. Hmm-umm.</p> <p>23 Q. So you were asked to offer an opinion in</p> <p>24 this case in which you say that research has shown</p> <p>25 forced-air warming devices to be safe for the use in</p>

<p style="text-align: right;">Page 154</p> <p>1 the operating room, and you haven't done even a Google 2 search?</p> <p>3 A. No. I look at the guidelines.</p> <p>4 Q. That's not my question.</p> <p>5 A. Okay.</p> <p>6 Q. You haven't --</p> <p>7 A. No, --</p> <p>8 Q. You haven't --</p> <p>9 A. -- I have not.</p> <p>10 Q. -- done a Google search.</p> <p>11 A. I have not.</p> <p>12 Q. You haven't --</p> <p>13 Have you gone to do any PubMed searches?</p> <p>14 A. No.</p> <p>15 Q. Do you know what PubMed is?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Okay. You say: "Cotton blankets, although 18 cost effective, do not retain the heat needed to keep 19 the patient at normothermia during the entire 20 procedure."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. But we've talked about before that you don't 24 know the -- like what the del -- the change in 25 temperature would be between using a cotton blanket</p>	<p style="text-align: right;">Page 156</p> <p>1 normothermic, do you?</p> <p>2 A. I do.</p> <p>3 Q. Oh really?</p> <p>4 Are you aware of any --</p> <p>5 A. From --</p> <p>6 Q. Are you aware of any studies that indicate 7 that patients that have been -- orthopedic patients 8 that have been warmed with a Bair Hugger, over 50 9 percent of them still become hypothermic?</p> <p>10 A. No.</p> <p>11 Q. Okay. And you yourself don't even look at 12 the temperature of the patient during the surgery; do 13 you?</p> <p>14 A. Correct.</p> <p>15 Q. That's the anesthesiologist.</p> <p>16 A. Correct.</p> <p>17 Q. You don't know whether or not they're being 18 kept normothermic during the surgery; do you?</p> <p>19 Do you?</p> <p>20 A. Anesthesia would let us know.</p> <p>21 Q. Have you looked at any medical records?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Are you saying that -- that you -- 24 that patients that are warmed with the Bair Hugger are 25 kept above, or are kept normothermic?</p>
<p style="text-align: right;">Page 155</p> <p>1 and a forced-air warming blanket; correct?</p> <p>2 A. Correct. Cotton blankets are considered 3 passive. The forced-air are considered active types 4 of warming.</p> <p>5 Q. I assume that when you were -- agreed to be 6 an expert in this case you just automatically accepted 7 the fact that the Bair Hugger was effective and safe.</p> <p>8 A. That was in my practice, yes.</p> <p>9 Q. Okay. But you've never yourself questioned 10 that before; correct?</p> <p>11 A. Correct.</p> <p>12 Q. You were just taught to use the Bair Hugger, 13 and you used it.</p> <p>14 A. It was effective in keeping the patient warm 15 and normothermic, and yes, that was my intent.</p> <p>16 Q. Well we went through that before. I think 17 the word "effective" is an incorrect word because you 18 don't know how effective it is compared to other -- 19 other things. You say it works.</p> <p>20 A. Compared to others. It was effective in 21 keeping the patient at their normothermic, --</p> <p>22 Q. Okay.</p> <p>23 A. -- and that was my knowledge.</p> <p>24 Q. But you don't know whether or not the Bair 25 Hugger even works in many surgeries to keep a patient</p>	<p style="text-align: right;">Page 157</p> <p>1 A. Yes.</p> <p>2 Q. That is your opinion?</p> <p>3 A. Yes.</p> <p>4 Q. And that's based on what?</p> <p>5 A. Quality studies I've done at different 6 facilities in tracking not only SCIP -- all SCIP 7 guidelines, but normothermic part of patients.</p> <p>8 Q. So you would disagree with the leading 9 researcher --</p> <p>10 A. No.</p> <p>11 Q. -- in a -- in --</p> <p>12 MS. LEWIS: Let him finish his question.</p> <p>13 THE WITNESS: Okay.</p> <p>14 Q. -- in a -- on hypothermia, Dr. Sessler, that 15 did a study that was funded by 3M and that was 16 published in 2015 that indicated that for the first 17 hour, hour and a half of surgery, perioperative 18 warming just doesn't work?</p> <p>19 A. I would not.</p> <p>20 MS. LEWIS: Objection to the form.</p> <p>21 A. I would not disagree.</p> <p>22 Q. They would know more than you; wouldn't 23 they?</p> <p>24 A. Probably.</p> <p>25 Q. Okay. And you yourself haven't looked at</p>

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1 temperature readings of patients that are -- that are  
 2 warmed perioperatively with forced-air warming; have  
 3 you?  
 4 A. Correct.  
 5 Q. Okay. You just read some AORN guideline and  
 6 just took it as the truth and accepted it; correct?  
 7 A. With careful consideration.  
 8 Q. What consideration? You didn't look at  
 9 what's going on with the patient during the many  
 10 hundreds of surgeries you've -- you've attended;  
 11 correct?  
 12 A. I don't think I'm going to answer that one.  
 13 Q. Why not?  
 14 A. Because I find that...  
 15 THE WITNESS: Can I take a short break?  
 16 MR. ASSAAD: Sure.  
 17 MS. LEWIS: Sure.  
 18 THE WITNESS: Thank you.  
 19 THE REPORTER: Off the record, please.  
 20 (Recess taken from 1:41 to 1:51 p.m.)  
 21 BY MR. ASSAAD:  
 22 Q. You ready to continue?  
 23 A. Yes.  
 24 Q. Okay.  
 25 A. You may repeat the last question.

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1 Q. Just about to do that.  
 2 A. Okay.  
 3 Q. You didn't look at what's going on with the  
 4 patient during the many hundreds of surgeries you've  
 5 attended with respect to their temperature.  
 6 A. No. That's not correct.  
 7 Q. You have?  
 8 A. You can see the temperature on the monitor,  
 9 just as I would glance at the monitor to see what  
 10 their heart rate or blood pressure is, you can see the  
 11 temperature monitor on the -- on the monitor.  
 12 Q. And it's your opinion in many, if not most  
 13 of those surgeries, that the patient was normothermic?  
 14 A. I would not begin to answer that question.  
 15 Q. Okay. I mean, sitting here today you do not  
 16 know how effective the Bair Hugger is with maintaining  
 17 normothermia during surgery.  
 18 A. That's not true.  
 19 Q. Okay. Well how do you know how effective it  
 20 is?  
 21 A. From the anesthesia provider that I would  
 22 work with would let us know what the patient's  
 23 temperature was pre, during and post for each patient.  
 24 Q. Well you --  
 25 A. It's recorded.

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1 Q. You haven't looked --  
 2 A. It's recorded.  
 3 Q. You haven't looked at the many studies that  
 4 indicate that even with forced-air warming that the  
 5 majority of patients become hypothermic.  
 6 A. I have not.  
 7 Q. Okay. And you wouldn't disagree with that  
 8 literature, would you?  
 9 MS. LEWIS: Objection to form.  
 10 A. Until I read it, I don't know.  
 11 Q. Do you know whether or not a -- if you  
 12 compare a -- a knee implant surgery, a total knee as  
 13 compared to a abdominal surgery, which patient is more  
 14 susceptible to becoming hypothermic?  
 15 A. No, I do not.  
 16 Q. You're aware that this case is a  
 17 multidistrict litigation. You know what that means?  
 18 A. Yes. It's more than one --  
 19 Q. Okay.  
 20 A. -- area. Yes.  
 21 Q. And you're aware that, as I said before,  
 22 there is, I think over 2700 plaintiffs in the case.  
 23 A. Yes, I believe you told me that.  
 24 Q. And growing every day. More people are  
 25 filing cases. Do you understand that?

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1 A. It's -- You're telling me that. I have no  
 2 knowledge of it.  
 3 Q. Now are you aware that there has been  
 4 studies performed that show that the Bair Hugger  
 5 increases the risks of surgical-site infections or  
 6 joint infections 3.8 times?  
 7 A. No.  
 8 MS. LEWIS: Objection, form.  
 9 Q. You don't recall reading that, looking at  
 10 the Kellam article and where it sites a lot of the  
 11 literature that indicate that forced-air warming, or  
 12 the Bair Hugger, might cause a risk to the patients?  
 13 MS. LEWIS: Objection, form.  
 14 A. I believe their conclusion was it was  
 15 inconclusive.  
 16 Q. That wasn't my question, ma'am.  
 17 A. Okay.  
 18 Q. My question is --  
 19 A. Restate your question.  
 20 Q. My question: Did you -- Did you -- Did you  
 21 --  
 22 You're aware that they looked through all  
 23 the literature; correct?  
 24 A. Yes.  
 25 MS. LEWIS: Do you want to show her the



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<p style="text-align: right;">Page 162</p> <p>1 articles, --</p> <p>2 MR. ASSAAD: No.</p> <p>3 MS. LEWIS: -- Gabe, please?</p> <p>4 MR. ASSAAD: No.</p> <p>5 MS. LEWIS: Well it's not a memory game.</p> <p>6 MR. ASSAAD: I'm not asking here to put</p> <p>7 anything --</p> <p>8 MS. LEWIS: Then don't expect an answer.</p> <p>9 MR. ASSAAD: Feel free to show her the</p> <p>10 article when you want to do a direct. I do my</p> <p>11 examination the way I want to do it, you do it the</p> <p>12 way you want to do it. Fair enough?</p> <p>13 MS. LEWIS: It's not a memory game, so.</p> <p>14 MR. ASSAAD: She can say I "don't</p> <p>15 remember." You want to coach her to what --</p> <p>16 MS. LEWIS: No. I'm just saying, if you --</p> <p>17 if you're going to ask her about an article --</p> <p>18 MR. ASSAAD: I'm not asking her about</p> <p>19 articles.</p> <p>20 MS. LEWIS: You said did it say something.</p> <p>21 (Interruption by the reporter.)</p> <p>22 (Discussion off the stenographic</p> <p>23 record.)</p> <p>24 BY MR. ASSAAD:</p> <p>25 Q. Do you recall it cited numerous articles or</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. And you agree as an expert you should be</p> <p>2 independent in thought; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And to evaluate all the information before</p> <p>5 you offer an opinion; correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And you basically took a nursing</p> <p>8 article and formulated all your opinions with respect</p> <p>9 to the safety of the Bair Hugger.</p> <p>10 MS. LEWIS: Objection, form.</p> <p>11 A. My background is nursing.</p> <p>12 Q. And what?</p> <p>13 A. My background is nursing.</p> <p>14 Q. Yeah, but you took a nursing -- this AORN</p> <p>15 article by Kellam, who -- who is a nurse --</p> <p>16 A. Correct.</p> <p>17 Q. -- or she's a nurse.</p> <p>18 A. She is.</p> <p>19 Q. And you just took that as your only resource</p> <p>20 regarding the safety of the Bair Hugger.</p> <p>21 A. Correct.</p> <p>22 MS. LEWIS: Objection, form.</p> <p>23 Q. And Kellam is a literature review; correct?</p> <p>24 A. Yes.</p> <p>25 Q. And you --</p>
<p style="text-align: right;">Page 163</p> <p>1 literature in the Kellam study?</p> <p>2 A. Yes. I do recall that it was more than one</p> <p>3 study --</p> <p>4 Q. Okay.</p> <p>5 A. -- that they cited.</p> <p>6 Q. At any point did you actually go and review</p> <p>7 those articles?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. What do you mean, not to your knowledge?</p> <p>10 A. Not that I recall reading any of them, no.</p> <p>11 Q. Well do you recall --</p> <p>12 I mean, you kept accurate records of your --</p> <p>13 of your time; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And if you were working on this case and you</p> <p>16 went and read some articles and spent time doing it,</p> <p>17 you would have put that on your time sheet; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And --</p> <p>20 (Discussion off the stenographic record.)</p> <p>21 Q. And in Exhibit 4, prior to the submission of</p> <p>22 your report of June 2nd, 2017 there's nothing to</p> <p>23 indicate that you reviewed articles.</p> <p>24 A. Correct. That does not state that, that's</p> <p>25 correct.</p>	<p style="text-align: right;">Page 165</p> <p>1 And sitting here today if I asked you about</p> <p>2 any of the articles cited in Kellam that they</p> <p>3 reviewed, the literature, you would not be able to</p> <p>4 answer because you did not review them.</p> <p>5 A. Correct.</p> <p>6 Q. Did you even ask for any of the plaintiffs'</p> <p>7 expert reports besides the orthopedic surgeon, Dr.</p> <p>8 Stonnington?</p> <p>9 MS. LEWIS: Objection, form, to any</p> <p>10 discussions with counsel.</p> <p>11 A. No.</p> <p>12 Q. You did not see plaintiffs' computational</p> <p>13 fluid dynamics expert's report; correct?</p> <p>14 A. Correct.</p> <p>15 Q. Which shows the airflow similar to the</p> <p>16 airflow that you saw; correct?</p> <p>17 A. Correct.</p> <p>18 Q. Would you --</p> <p>19 Would you have taken that into consideration</p> <p>20 if the plaintiffs' report, which was done by one of</p> <p>21 the leading experts in particle flow in the United</p> <p>22 States, showed that the Bair Hugger does cause</p> <p>23 significant particle increase over the surgical site?</p> <p>24 MS. LEWIS: Objection, form.</p> <p>25 A. Take it into consideration for --</p>

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<p style="text-align: right;">Page 166</p> <p>1 Q. In your opinions of whether or not the Bair 2 Hugger is safe. 3 A. No. 4 MS. LEWIS: Objection, form. 5 A. I don't have an opinion on that. I'm not 6 that kind of expert. 7 Q. I understand that, but you looked at an 8 airflow that was provided to you by the defense; 9 correct? 10 A. Correct. 11 Q. Okay. Have you ever consulted for 3M 12 before? 13 A. No. 14 Q. Have you ever worked for 3M? 15 A. No. 16 Q. Please help me understand what exactly -- 17 what exact methodology that you looked at or did to 18 determine that the -- that the Bair Hugger is safe 19 besides your predisposed determination based on your 20 experience. 21 MS. LEWIS: Objection, form. 22 A. From -- I believe I cite AORN as a 23 recommendation, and the articles that I have attached, 24 used. 25 Q. Well you've been a nurse for a long time;</p>	<p style="text-align: right;">Page 168</p> <p>1 road, but she's not offering an expert opinion on the 2 safety of the Bair Hugger. There's no expert opinion 3 in her report on the safety of the Bair Hugger. 4 Q. If you look at page 4. It states: 5 "Research has shown forced-air warming devices to be 6 safe for use in the operating room." 7 A. Yes. 8 MR. ASSAAD: If you're willing to cross 9 that statement out, stipulate to cross that out, 10 I'll stop asking. 11 MS. LEWIS: It's a statement, it's not an 12 opinion. It's a statement. It's not an expert 13 opinion. It doesn't say, "it is my expert opinion 14 that." So she's not offering expert opinions on the 15 safety of the Bair Hugger. 16 BY MR. ASSAAD: 17 Q. On page 4, last paragraph, you talk about 18 the antiseptic solution to decrease the transient 19 bacteria on the skin of a patient. 20 A. Yes. 21 Q. Are you going to offer any opinions with 22 respect to the different types of antiseptic 23 solutions? 24 A. No. 25 MR. ASSAAD: And Ms. Lewis, I assume that</p>
<p style="text-align: right;">Page 167</p> <p>1 correct? 2 A. Correct. 3 Q. And recommendations change; correct? 4 A. Yes. They're updated. 5 Q. Okay. Certain things become -- science 6 advances and things that were thought were good for 7 patients were decided they weren't good for patients 8 any more; correct? 9 A. That's correct. 10 Q. I mean we could talk about, you know, 11 preparing the skin of the patient; correct? 12 A. Correct. 13 Q. Some things they thought were good they 14 realized they weren't good and they've changed them; 15 correct? 16 A. Correct. 17 Q. Okay. So just -- besides looking at AORN, 18 did you do any -- did you create any -- Strike that. 19 Besides looking at the literature, did you 20 yourself apply any independent thought and formulate 21 your own opinions with respect to the safety of Bair 22 Hugger? 23 A. No. 24 MS. LEWIS: Objection, form. 25 Gabe, I mean, you can keep going down this</p>	<p style="text-align: right;">Page 169</p> <p>1 she's not going to offer any opinions on the efficacy 2 of Bair Hugger; correct? 3 MS. LEWIS: I mean, she's not offering 4 expert opinions on the efficacy or safety. 5 MR. ASSAAD: Okay. Just -- Because she 6 keeps on saying it. I want to make sure, if there's 7 reference to it in her report that -- 8 MS. LEWIS: Not with respect to an expert 9 opinion. I mean, if you want us to stipulate? 10 MR. ASSAAD: Yes. 11 MS. LEWIS: I'm saying there's not -- she's 12 not offering an expert opinion on the safety of the 13 Bair Hugger. 14 MR. ASSAAD: Or efficacy. 15 MS. LEWIS: Or efficacy. 16 MR. ASSAAD: Okay. 17 BY MR. ASSAAD: 18 Q. Are you going to offer opinions on draping 19 of a -- in a total knee or total hip arthroplasty? 20 A. No. 21 Q. You say here that: "Sterile light handle 22 covers may be attached to the surgical lights by any 23 team member." 24 A. Correct. 25 Q. Is that what we talked about before for the</p>

<p style="text-align: right;">Page 170</p> <p>1 handles of the lights?</p> <p>2 A. Correct.</p> <p>3 Q. On page 5, fourth paragraph from the bottom</p> <p>4 you state: "During the surgical procedure, the</p> <p>5 surgeon and the scrub nurse stand across the operating</p> <p>6 room bed from each other. Throughout the procedure,</p> <p>7 the surgical team is passing instruments and sponges</p> <p>8 back and forth across the surgical site which can</p> <p>9 potentially create air current disturbances."</p> <p>10 What's your basis behind that?</p> <p>11 A. Observations. Just watching instruments</p> <p>12 being handled back and forth I know there's some</p> <p>13 changes.</p> <p>14 Q. Well that's obvious because you're moving to</p> <p>15 perform an operation.</p> <p>16 A. Absolutely.</p> <p>17 Q. But why do you think it causes air current</p> <p>18 disturbances? What's your basis?</p> <p>19 A. Just my own personal knowledge.</p> <p>20 Q. Have you measured --</p> <p>21 A. No, --</p> <p>22 Q. -- any air --</p> <p>23 A. -- I have not.</p> <p>24 Q. Have you felt any air current disturbances?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 172</p> <p>1 don't know.</p> <p>2 Q. Okay.</p> <p>3 A. I believe I said there was a range that was</p> <p>4 usually defined by anesthesia.</p> <p>5 Q. Do you consider everything that AORN</p> <p>6 publishes authoritative?</p> <p>7 A. Yes. That's a strong word, but yes.</p> <p>8 Q. So AORN's never wrong.</p> <p>9 A. No.</p> <p>10 Q. Even though they may change, from time to</p> <p>11 time, their recommendations.</p> <p>12 A. Correct.</p> <p>13 Q. Okay. But AORN doesn't perform scientific</p> <p>14 studies, they just do mostly literature reviews;</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. Because AORN is basically a nursing</p> <p>18 organization; correct?</p> <p>19 A. Professional, yes. Professional nursing</p> <p>20 organization.</p> <p>21 Q. Okay. So my understanding is AORN is --</p> <p>22 rarely -- rarely publishes, like, peer-reviewed</p> <p>23 literature regarding scientific studies.</p> <p>24 MS. LEWIS: Objection, form.</p> <p>25 A. Their journal is a peer-reviewed journal</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. So would it be fair to say that you really</p> <p>2 have no scientific basis to support that statement?</p> <p>3 A. Other than my own observations.</p> <p>4 Q. Well an obser -- Is that a scie --</p> <p>5 Is your observation a scientific basis?</p> <p>6 A. No.</p> <p>7 Q. Okay. So you agree with me that there's no</p> <p>8 scientific basis to support that observa -- to support</p> <p>9 that statement; correct?</p> <p>10 A. There's no research or a scientific basis</p> <p>11 that I know of.</p> <p>12 Q. So the --</p> <p>13 A. There may be some.</p> <p>14 Q. So the answer to my question previously is</p> <p>15 "correct."</p> <p>16 A. Yes.</p> <p>17 Q. Are you aware that there are orthopedic</p> <p>18 surgeons that do not use the Bair Hugger?</p> <p>19 A. Not in my practice in my experience.</p> <p>20 They've all used them.</p> <p>21 Q. In the Kellam paper it states that inad --</p> <p>22 inadvertent perioperative hypothermia is defined as a</p> <p>23 core body temperature of less than 36 degrees, and</p> <p>24 that's different than what you said of 37.</p> <p>25 A. I will -- I will defer to the experts. I</p>	<p style="text-align: right;">Page 173</p> <p>1 which is published on a monthly basis.</p> <p>2 Q. Yeah, but most of their publications are</p> <p>3 just literature reviews.</p> <p>4 A. No.</p> <p>5 MS. LEWIS: Objection, form.</p> <p>6 Q. So they actually do research?</p> <p>7 A. They publish research.</p> <p>8 Q. So they publish research that nurses do.</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Where does AORN get its funding?</p> <p>11 A. To publish? I'm sorry.</p> <p>12 Q. Where does -- I mean, it's a professional</p> <p>13 nursing organization.</p> <p>14 A. Correct. There are dues, and they have a</p> <p>15 variety of funding sources.</p> <p>16 Q. Do you have to pay money to publish in AORN?</p> <p>17 A. No.</p> <p>18 Q. You said you reviewed Dr. Stonnington's</p> <p>19 expert report?</p> <p>20 A. Yes.</p> <p>21 Q. What in his report are you --</p> <p>22 A. I'm trying to remember his report, to tell</p> <p>23 you the truth.</p> <p>24 Q. Well is there anything in his report that</p> <p>25 you are rebutting or contending?</p>

<p style="text-align: right;">Page 174</p> <p>1 A. Not that I can recall at this moment.</p> <p>2 Q. Is there anything you disagree in his</p> <p>3 report?</p> <p>4 A. I don't -- don't remember.</p> <p>5 MR. LEWIS: If you don't remember --</p> <p>6 A. Don't remember.</p> <p>7 (Discussion off the stenographic record.)</p> <p>8 MR. ASSAAD: All right. Let's take a</p> <p>9 break. We're going to go print up his report and so</p> <p>10 we can discuss it.</p> <p>11 THE WITNESS: Okay.</p> <p>12 THE REPORTER: Off the record, please.</p> <p>13 (Recess taken from 2:13 to 2:28 p.m.)</p> <p>14 BY MR. ASSAAD:</p> <p>15 Q. Go to Exhibit 1, which is your report.</p> <p>16 A. Yes.</p> <p>17 Q. You mentioned you received materials that</p> <p>18 you reviewed. Did you review these materials prior to</p> <p>19 writing your report?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. When did you receive these materials?</p> <p>22 A. I don't -- don't have that in my head.</p> <p>23 Q. Was it before or after the initial</p> <p>24 consultation?</p> <p>25 A. After.</p>	<p style="text-align: right;">Page 176</p> <p>1 Stonnington prior to writing your expert report?</p> <p>2 A. I can't answer that. I don't remember. I</p> <p>3 may have been reading them concurrently, don't</p> <p>4 remember.</p> <p>5 Q. Do you know who Dr. Stonnington is?</p> <p>6 A. No, other than an author of this report.</p> <p>7 Q. Do you know --</p> <p>8 Do you know whether or not he's an expert</p> <p>9 for the plaintiff or the defendant?</p> <p>10 A. I do not.</p> <p>11 Q. Okay.</p> <p>12 A. It says he's an expert, but I don't recall.</p> <p>13 Q. Do you recall --</p> <p>14 I mean, you've read his report; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Do you consider himself an --</p> <p>17 Do you consider him an expert?</p> <p>18 A. I am not qualified to answer that.</p> <p>19 Q. Okay. Is --</p> <p>20 I'll show you his report, but before I show</p> <p>21 you the report, is there anything that comes to mind</p> <p>22 that you disagreed with his report?</p> <p>23 MS. LEWIS: Objection, --</p> <p>24 A. I have no comment.</p> <p>25 MS. LEWIS: -- form.</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. After. So it would be after May 19th?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And before you started preparing your</p> <p>4 document?</p> <p>5 A. I can't answer to timeline.</p> <p>6 Q. Well why don't you look at Exhibit 4, which</p> <p>7 is the invoices.</p> <p>8 A. Correct.</p> <p>9 Q. So you -- you had an initial consultation</p> <p>10 with defense counsel on May 19th, 2017; correct?</p> <p>11 A. Yes.</p> <p>12 Q. All right. And then I take it that after</p> <p>13 that you received the documents listed in paragraph</p> <p>14 one of Exhibit 1; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And I take it that --</p> <p>17 Were they emailed to you or delivered to you</p> <p>18 by mail?</p> <p>19 A. Emailed.</p> <p>20 Q. Okay. Did you print them up?</p> <p>21 A. No.</p> <p>22 Q. Okay. And did you review the items of the</p> <p>23 -- the Complaint, the Answer to the Complaint and the</p> <p>24 Memorandum in Support of Defendants' Proposed Phase I</p> <p>25 Scheduling Order and the expert report of Dr.</p>	<p style="text-align: right;">Page 177</p> <p>1 Q. Okay.</p> <p>2 (Hughes Exhibit 5 marked for</p> <p>3 identification.)</p> <p>4 BY MR. ASSAAD:</p> <p>5 Q. What's been Exhibit 5 -- marked as Exhibit 5</p> <p>6 is the expert report of Dr. Michael J. Stonnington.</p> <p>7 Is this the expert report that you've seen?</p> <p>8 A. Yes. I believe it is.</p> <p>9 Q. Okay. And do you recall reading this</p> <p>10 report?</p> <p>11 A. Yes.</p> <p>12 Q. Did you read it from -- from beginning to</p> <p>13 end?</p> <p>14 A. Yes.</p> <p>15 Q. You didn't focus on any section?</p> <p>16 A. No.</p> <p>17 Q. Okay. What is it in this report, and you</p> <p>18 can go through page-by-page, that -- that -- if -- if</p> <p>19 there's anything that you disagree with -- that you</p> <p>20 would -- that you disagree with in this report?</p> <p>21 A. I have no comment that.</p> <p>22 Q. Are you rebutting this report in any way?</p> <p>23 A. No.</p> <p>24 Q. Okay. Was part of your objectives --</p> <p>25 objective in formulating your opinions was to rebut</p>

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<p style="text-align: right;">Page 178</p> <p>1 any of the opinions of Dr. Stonnington?</p> <p>2 A. No.</p> <p>3 (Discussion off the stenographic record.)</p> <p>4 Q. On Exhibit 3, which is your CV, under</p> <p>5 "Publications and Presentations," do any of those deal</p> <p>6 with patient-warming devices?</p> <p>7 A. On my publications?</p> <p>8 Q. Yeah.</p> <p>9 A. No. Not specifically, no.</p> <p>10 Q. Generally?</p> <p>11 A. No.</p> <p>12 Q. Okay. Under "Professional Affiliations" you</p> <p>13 have, "Presented to FDA regarding reprocessing single</p> <p>14 use devices --</p> <p>15 A. Yes.</p> <p>16 Q. -- consideration."</p> <p>17 What's that about?</p> <p>18 A. That was the era of reprocessing cardiac</p> <p>19 cath stents --</p> <p>20 Q. Okay.</p> <p>21 A. -- and whether or not they could be safely</p> <p>22 cleaned and reused.</p> <p>23 Q. Is anything -- any of your involvement with</p> <p>24 -- any of your involvement with AORN, any of your work</p> <p>25 you've done with them deal with patient-warming</p>	<p style="text-align: right;">Page 180</p> <p>1 largest contributors to AORN?</p> <p>2 A. I'm not aware of that.</p> <p>3 Q. Okay. You are aware that you're testifying</p> <p>4 on 3M's behalf in this case.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. When you stated previously that one</p> <p>7 of the two opinions you're going to offer -- well the</p> <p>8 two opinions were describe the environment, and Bair</p> <p>9 Hugger is separate from the surgical site. Remember</p> <p>10 you stated that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Is that the only opinion you're going</p> <p>13 to offer is that the Bair Hugger blanket is separated</p> <p>14 from the surgical site?</p> <p>15 A. Yes.</p> <p>16 Q. Anything else with regard to that issue</p> <p>17 besides that it's not on the surgical site?</p> <p>18 A. No.</p> <p>19 Q. Okay.</p> <p>20 MS. LEWIS: You mean other than what's in</p> <p>21 her report, or just what she said today?</p> <p>22 MR. ASSAAD: I don't know what is in her</p> <p>23 report, but basically the two opinions that she said</p> <p>24 today.</p> <p>25 A. Yes. I...</p>
<p style="text-align: right;">Page 179</p> <p>1 devices?</p> <p>2 A. No.</p> <p>3 Q. It says you were -- you're chair of the</p> <p>4 Transition Into Practice Committee.</p> <p>5 A. Correct.</p> <p>6 Q. And what does that entail?</p> <p>7 A. That's a work group of volunteers from AORN</p> <p>8 who are exploring ways to not only invite new graduate</p> <p>9 nurses into perioperative nursing, but to have</p> <p>10 clinical experiences for those still in baccalaureate</p> <p>11 programs.</p> <p>12 Q. And you're also chair of the -- from 2009 to</p> <p>13 2014, of the Recommended Practices Advisory Board?</p> <p>14 A. Yes.</p> <p>15 Q. Does that deal with operating rooms?</p> <p>16 A. Yes. They all deal with operating rooms,</p> <p>17 yes.</p> <p>18 Q. Was there any work done in that committee or</p> <p>19 that Advisory Board dealing with patient warming?</p> <p>20 A. There may have been, but I'd have to look at</p> <p>21 the dates.</p> <p>22 Q. Okay. But sitting here today you don't</p> <p>23 recall one way or the other.</p> <p>24 A. No.</p> <p>25 Q. Okay. Are you aware that 3M is one of the</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. Okay. And I guess what Ms. Lewis was going</p> <p>2 to is you're also going to describe the environment of</p> <p>3 the OR.</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And -- Strike that.</p> <p>6 Give me a minute or two. I might be done.</p> <p>7 Have you been asked to do any further</p> <p>8 research or any work for 3M?</p> <p>9 A. No.</p> <p>10 Q. Or the attorneys?</p> <p>11 A. No.</p> <p>12 Q. Have you been asked to participate in any</p> <p>13 studies or scientific experiments for 3M regard -- in</p> <p>14 this case?</p> <p>15 A. No.</p> <p>16 MR. ASSAAD: That's all I have. Thank you.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 MS. LEWIS: I do have some questions.</p> <p>19 THE WITNESS: Okay.</p> <p>20 MS. LEWIS: Just a few.</p> <p>21 (Discussion off the stenographic record.)</p> <p>22 (Brief recess taken.)</p> <p>23 EXAMINATION</p> <p>24 BY MS. LEWIS:</p> <p>25 Q. Ms. Hughes, I have a couple of questions, I</p>



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1 believe just a few.  
 2 A. Okay.  
 3 Q. You were asked a question -- or you were --  
 4 You were asked a question that you --  
 5 whether you could cite a source for your statement  
 6 that the air is not sterile. And so my question is:  
 7 Do you need a source to make that sort of a statement,  
 8 or is that common knowledge?  
 9 A. It's pretty much common knowledge that  
 10 sterile is a different category -- categorization and  
 11 the air is not something that can be sterilized.  
 12 (Interruption by the reporter.)  
 13 Q. You were also asked the question whether you  
 14 had a scientific basis for your statement about wiping  
 15 down the equipment. The -- The question you were  
 16 asked was from a statement in your report, and you  
 17 were asked whether there was a scientific basis for  
 18 talking about a disinfectant killing all bacteria.  
 19 And so my question is: [Clearing throat.]  
 20 Is there any label on a disinfectant that says the  
 21 disinfectant will kill all bacteria?  
 22 A. No. Most of the statements talk about the  
 23 percents, and the most effective are at least 99  
 24 percent, but not one -- not 100 percent.  
 25 Q. So the manufacturers of the disinfectants

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1 themselves say, or already make clear that they aren't  
 2 killing all bacteria; correct?  
 3 A. Correct.  
 4 MR. ASSAAD: Objection to form.  
 5 Q. You were asked a question about AORN's  
 6 research. You were asked whether you knew what  
 7 research AORN did. And in your response when you said  
 8 you did not know, were you saying you didn't have  
 9 personal knowledge of the research, or -- or not? I'm  
 10 just trying to understand your question. Did --  
 11 Does the AORN article itself cite the  
 12 research on which they put in their report?  
 13 A. Yes. And to clarify, AORN itself as an  
 14 entity does not do research, but they will publish  
 15 research, and then there is a foundation group that  
 16 will fund research.  
 17 Q. So for the article -- the guidelines on  
 18 which you mentioned earlier, AORN does cite, in the  
 19 guidelines, these studies or research on which they  
 20 referenced --  
 21 A. Correct.  
 22 Q. -- for their statement; correct?  
 23 MR. ASSAAD: Object to the form.  
 24 A. Correct. And their research is rated.  
 25 MS. LEWIS: Those are all the questions I

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1 have.  
 2 MR. ASSAAD: I just have one follow-up  
 3 question.  
 4 THE WITNESS: Yes.  
 5 EXAMINATION  
 6 BY MR. ASSAAD:  
 7 Q. You just testified that you are basing it on  
 8 common knowledge that the air is not sterile.  
 9 A. Correct.  
 10 Q. But sitting here today you don't know how  
 11 many CFUs per cubic foot or cubic meter the air coming  
 12 out of a -- a ventilation system has; correct?  
 13 A. That's correct.  
 14 Q. So it can be sterile, you just don't know  
 15 one way or the other.  
 16 A. That's correct. I've never been -- I've  
 17 never been --  
 18 That knowledge has never been shared to me  
 19 that the air coming out of a ventilation system is in  
 20 fact sterile.  
 21 Q. So you're basically just guessing.  
 22 A. No.  
 23 Q. Well if you don't know what the CFU burden  
 24 is out of the air, okay, I mean it could be -- it  
 25 could be HEPA filtered; correct?

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1 A. Correct, but that's still not 100 percent,  
 2 it's not sterile.  
 3 Q. Well it's 99.997 percent of .3 microns  
 4 coming out of the air, okay? Do you understand that?  
 5 That's what HEPA means.  
 6 A. Correct.  
 7 Q. Do you know how large a bacteria is?  
 8 A. No.  
 9 Q. Okay. So the air can be come --  
 10 The air out of a HEPA filtration ventilation  
 11 system may be sterile, it may not, you just don't know  
 12 today.  
 13 A. It's not the recognized definition of  
 14 sterile.  
 15 Q. What's the recognized definition of sterile?  
 16 A. It's 6D, 99 -- 99 and point 6 bacterial kill  
 17 is sterile.  
 18 Q. 99.6?  
 19 A. 99999, six nines, which is called 6D, 6  
 20 deep --  
 21 Q. Okay.  
 22 A. -- is what's the recognized definition of  
 23 sterile.  
 24 Q. Okay. And you don't know what is the  
 25 bacterial load coming out of a ventilation system.

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1 A. Correct.  
 2 Q. Okay. So it may be sterile, it may not be,  
 3 you don't know.  
 4 A. Correct.  
 5 Q. Okay.  
 6 MR. ASSAAD: That's all I have.  
 7 THE WITNESS: Okay.  
 8 THE REPORTER: Off the record, please.  
 9 (Discussion off the stenographic record.)  
 10 (REPORTER'S NOTE: The following  
 11 is stenographic record only.)  
 12 MR. ASSAAD: I request that she reads and  
 13 signs her transcript.  
 14 THE WITNESS: Okay.  
 15 MS. LEWIS: It's up to you, but --  
 16 MR. ASSAAD: Actually it's not. Under the  
 17 rules, I can request it. If she doesn't want to do  
 18 it, that's fine, but she can be held responsible for  
 19 it.  
 20 MS. LEWIS: No problem.  
 21 THE WITNESS: Is -- Do you provide a paper  
 22 copy for me then, --  
 23 MS. LEWIS: Yes.  
 24 THE WITNESS: -- to read and sign?  
 25 MS. LEWIS: Yes. She'll get you a copy.

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1 She'll get it to me and I'll get it to you.  
 2 THE WITNESS: Thank you. That's what I  
 3 wanted to know. I can read it before I sign it.  
 4 (Deposition concluded at 2:46 p.m.)  
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## C E R T I F I C A T E

1 I, Debby J. Campeau, hereby certify that I  
 2 am qualified as a verbatim shorthand reporter; that I  
 3 took in stenographic shorthand the testimony of  
 4 ANTONIA B. HUGHES at the time and place aforesaid;  
 5 and that the foregoing transcript consisting of 187  
 6 pages is a true and correct, full and complete  
 7 transcription of said shorthand notes, to the best of  
 8 my ability.

9 Dated at Lino Lakes, Minnesota, this 7th  
 10 day of August, 2017.  
 11  
 12  
 13  
 14

DEBBY J. CAMPEAU  
 Notary Public

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## S I G N A T U R E P A G E

1 I, ANTONIA B. HUGHES, the deponent, hereby  
 2 certify that I have read the foregoing transcript,  
 3 consisting of 187 pages, and that said transcript is  
 4 a true and correct, full and complete transcription  
 5 of my deposition, except per the attached  
 6 corrections, if any.

7 PAGE LINE CHANGE/REASON FOR CHANGE

8	_____	_____
9	_____	_____
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18	_____	_____
19	_____	_____

20 Date Signature of Witness

21  
 22 WITNESS MY HAND AND SEAL this \_\_\_\_\_  
 23 day of \_\_\_\_\_, 2017.  
 24

25 (DJC) \_\_\_\_\_